Office-Supreme Court, U.S.
FILED
FEB 23 1983

No. 82-472

In The

Supreme Court of the United States

October Term, 1982

JOSEPH C. RUSSELLO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX

ALVIN E. ENTIN, ESQ.
RONALD A. DION, ESQ.
ENTIN, SCHWARTZ, DION & SCLAFANI
2020 N. E. 163rd St., Suite 300
North Miami Beach, Florida 33162
Telephone: (305) 944-9100

Attorneys for Petitioner

REX E. LEE
Solicitor General
D. LOWELL JENSEN
Asst. Attorney General
SARA CRISCITELLI
Attorney
Attorneys for Respondent
Department of Justice
Washington, D.C. 20530
Telephone: (202) 633-2217

Petition for Writ of Certiorari filed September 9, 1982.
Certiorari granted January 10, 1983.

COCKLE PRINTING CO., 2311 Douglas St., Omaha 68102

TABLE OF CONTENTS

	Page(s)
Docket entries	1
Indictment (redacted to counts relating to Defendant Russello)	5
Judgment and probation/commitment order	51
Special verdict (re: Forfeiture)	54
Order and judgment of forfeiture	58
Notice of Appeal	61
Panel decision in *United States v. Martino* (redacted to forfeiture)	62
Order granting *en banc* review	73
En banc decision in *United States v. Martino*	77
Order granting certiorari review in United States Supreme Court	110

DOCKET ENTRIES

Date	Proceedings
1977	
June 8	—Indictment returned (4 counts).
16	—Deft. waived reading of indictment. Arraigned and plead not guilty as to all Counts.
Nov.	
7	—Proceedings on trial before the Hon. Wm. Terrell Hodges.
8	—Jury trial resumed from Nov. 7, 1977.
9	—Jury trial from Nov. 8, 1977.
10	—Jury selection process continued from Nov. 9th.
11	—Trial resumed.
14	—Trial resumed.
15	—Trial resumed.
16	—Jury trial resumed from Nov. 15, 1977.
17	—Trial resumed.
18	—Trial resumed.
21	—Trial resumed.
22	—Jury trial resumed from Nov. 21, 1977.
23	—Jury trial resumed from Nov. 22, 1977.
28	—Jury trial resumed from Nov. 23, 1977.
29	—Jury trial resumed from Nov. 28, 1977.
30	—Jury trial resumed from Nov. 29, 1977.
Dec. 1	—Jury trial resumed from Nov. 30, 1977.
Dec. 2	—Jury trial resumed from Dec. 1, 1977.
5	—Jury trial resumed from Dec. 2, 1977.
6	—Jury trial resumed from Dec. 6, 1977.
7	—Jury trial resumed from Dec. 6, 1977.
8	—Jury trial resumed from Dec. 7, 1977.

9—Jury trial resumed from Dec. 8, 1977.
12—Jury trial resumed from Dec. 12, 1977.
13—Jury trial resumed from Dec. 12, 1977.
14—Jury trial resumed from Dec. 13, 1977.
15—Jury trial resumed from Dec. 14, 1977.
Dec. 16—Jury trial resumed from Dec. 15, 1977.
19—Jury trial resumed from Dec. 16, 1977.
20—Jury trial resumed from Dec. 19, 1977.
21—Jury trial resumed from Dec. 20, 1977.
27—Jury trial resumed from Dec. 21, 1977.
28—Jury trial resumed from Dec. 27, 1977.
Dec. 28—Jury trial resumed from Dec. 27, 1977.
29—Jury trial resumed from Dec. 28, 1977.
30—Jury trial resumed from Dec. 29, 1977.

1978

Jan. 3—Jury trial resumed from Dec. 30, 1977.
Jan. 9—Jury trial resumed from Jan. 3, 1978.
10—Jury trial resumed from Jan. 9, 1978.
11—Jury trial resumed from Jan. 10, 1978.
Jan. 12—Jury trial resumed Jan. 11, 1978.
16—Jury trial resumed from Jan. 12, 1978.
17—Jury trial resumed from Jan. 16, 1978.
18—Jury trial resumed from Jan. 17, 1978.
19—Jury trial resumed from Jan. 18, 1978.
20—Jury trial resumed from Jan. 19, 1978.
23—Jury trial resumed from Jan. 20, 1978.
24—Jury trial resumed from Jan. 23, 1978.
25—Jury trial resumed from Jan. 24, 1978.

26—Jury trial resumed from Jan. 25, 1978.

27—Jury trial resumed from Jan. 26, 1978.

28—Jury trial resumed from Jan. 27, 1978.

Jury retires at 5:40 PM.

30—Jury trial resumed from Jan. 28, 1978.
Jury resumed deliberations.
Jury retires for the night.

31—Jury trial resumed from Jan. 30, 1978.
Jury deliberating.
Jury retired for the night.

Feb. 2—Jury trial resumed from Feb. 1, 1978.
Jury deliberating.

3—Jury trial resumed from Feb. 2, 1978.
Jury deliberating.

4—Jury trial resumed from Feb. 3, 1978.
Jury deliberating.

Feb. 6—Jury trial resumed from Feb. 4, 1978.
Jury deliberating.

7—Jury trial resumed from Feb. 6, 1978.
Jury deliberating.

8—Jury trial resumed from Feb. 7, 1978.
Jury deliberating.

9—Jury trial resumed from Feb. 8, 1978.
Jury deliberating.

10—Jury trial resumed from Feb. 9, 1978.
Jury deliberating.

13—Jury trial resumed from Feb. 10, 1978.
Jury deliberating.

14—Jury trial resumed from Feb. 13, 1978.
Jury deliberating.

15—Jury trial resumed from Feb. 14, 1978.
Jury deliberating.

16—Jury trial resumed from Feb. 15, 1978.
Jury deliberating.

17—Jury trial resumed from Feb. 16, 1978. Jury deliberating.

20—Jury trial resumed from Feb. 17, 1978. Jury deliberating.

21—Jury trial resumed from Feb. 20, 1978. Jury deliberating.

22—Jury trial resumed from Feb. 21, 1978. Jury deliberating.

23—Jury trial resumed from Feb. 22, 1978. Jury deliberating.

24—Jury trial resumed from Feb. 23, 1978. Jury deliberating. Jury returns in open court and announces that they have reached their verdicts.

Verdict read in open court.

Verdict=1, 2, 28 & 29 guilty. Jury polled=all agreed.

Judgment of acquittal as to all not guilty verdicts.

28—SPECIAL VERDICTS: Forfeitures of $75.000.00 to US Government.

Forfeitures of $75,00.00 to US Government.

Forfeitures of $161,190.43 to US Government.

Apr. 7—Adjudged guilty as to cts. 1, 2, 21 and 22.

Apr. 7—SENTENCE: 10 yrs. ct. 1, 10 yrs. ct. 2, 5 yrs. ct. 28, 5 yrs. ct. 29, all to run concurrently under Title 18; USC, Section 4205(b)(2).

14—Notice of Appeal (cc to USCA).

Nov. 17—Order and judgment of forfeiture.

27—Notice of appeal.

Dec. 18—Order from U.S.C.A. that all forfeitures are stayed pending further order of this court.

1979

Jan. 3—Order from USCA denying appellant's motion to stay an order and judgment of forfeiture pending appeal.

Jan. 22—Order from USCA DENIED DEFT. Motion for reconsideration of judgment of forfeiture.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 77-00053-CR-I-H

VIOLATIONS:

[18 U.S.C. 1962(d)
18 U.S.C. 1962(c)
18 U.S.C. 1341
18 U.S.C. 2]

UNITED STATES OF AMERICA

vs.

JOSEPH J. CARTER, A/K/A "Joe", PAUL GUARINO, FRANK SCIONTI, JOHN THOMAS RIVERA, A/K/A "Johnny Rivera", "Scarface Rivera", RICHARD VICTOR ARRIGO, A/K/A "Vic Rossi", JOE GOMEZ, JIMMY FARINA, MANUEL EUFEMIO FERNANDEZ, JR., JOHN NICHOLAS LOSTRACCO, SAM C. MARTINO, WILLIE NORIEGA, A/K/A "Bill", AMALIA MORGADO, JOSEPH MACALUSO, A/K/A "Joe", JOSEPH D. LAZZARA, A/K/A "Joe", ROLANDO GONZALEZ RODRIGUEZ, A/K/A "Roland Rodriguez", JOSEPH C. RUSSELLO, A/K/A "Joe", BERTON B. CHASE, A/K/A "Bert", ROSARIO PALERMO, WILLIAM H. BROWN, A/K/A "Bill", JOHN D. FISHER, ROBERT D. YOUNG, RICHARD W. STARK, AND JOHN ALAN HOLT.

I N D I C T M E N T
(Redacted to Counts relating to Defendant Russello)

THE GRAND JURY CHARGES:

COUNT ONE

That from in or about September, 1972, and continuously thereafter up to and including the date of the filing of this Indictment, in the Middle District of Florida and elsewhere,

JOSEPH J. CARTER, a/k/a "Joe",
PAUL GUARINO,
FRANK SCIONTI,
JOHN THOMAS RIVERA, a/k/a
"Johnny Rivera", "Scarface Rivera",
RICHARD VICTOR ARRIGO, a/k/a
"Vic Rossi",
JOE GOMEZ,
JIMMY FARINA,
MANUEL EUFEMIO FERNANDEZ, JR.,
JOHN NICHOLAS LOSTRACCO,
SAM C. MARTINO,
WILLIE NORIEGA, a/k/a "Bill",
AMALIA MORGADO,
JOSEPH MACALUSO, a/k/a "Joe",
JOSEPH D. LAZZARA, a/k/a "Joe",
ROLANDO GONZALEZ RODRIGUEZ,
a/k/a "Roland Rodriguez",
JOSEPH C. RUSSELLO, a/k/a "Joe",
BERTON B. CHASE, a/k/a "Bert",
ROSARIO PALERMO,
WILLIAM H. BROWN, a/k/a "Bill",
JOHN D. FISHER,
ROBERT D. YOUNG,
RICHARD W. STARK, AND
JOHN ALAN HOLT,

the defendants herein, and others who are both known and unknown to the Grand Jury, did unlawfully, knowingly, and willfully, conspire, combine, confederate, and agree together, and with each other to commit an offense against the United States, that is: To conduct and to participate directly and indirectly in the conduct of the affairs of an enterprise through a pattern of racketeering activity in violation of Section 1962(c) of Title 18 of the United States Code as hereinafter described:

1. *Purpose of the Enterprise:* The aforesaid defendants,

JOSEPH J. CARTER, a/k/a "Joe",
PAUL GUARINO,
FRANK SCIONTI,
JOHN THOMAS RIVERA, a/k/a
"Johnny Rivera", "Scarface Rivera",
RICHARD VICTOR ARRIGO, a/k/a
"Vic Rossi",
JOE GOMEZ,
JIMMY FARINA,
MANUEL EUFEMIO FERNANDEZ, JR.,
JOHN NICHOLAS LOSTRACCO,
SAM C. MARTINO,
WILLIE NORIEGA, a/k/a "Bill",
AMALIA MORGADO,
JOSEPH MACALUSO, a/k/a "Joe",
JOSEPH D. LAZZARA, a/k/a "Joe"
ROLANDO GONZALEZ RODRIGUEZ, a/k/a
"Roland Rodriguez",
JOSEPH C. RUSSELLO, a/k/a "Joe"
BERTON B. CHASE, a/k/a "Bert",
ROSARIO PALERMO,
WILLIAM H. BROWN, a/k/a "Bill",
JOHN D. FISHER,
ROBERT D. YOUNG,
RICHARD W. STARK, AND
JOHN ALAN HOLT,

were associated together in fact as an Enterprise as defined by Section 1961(4), Title 18, United States Code, to-wit: a group of individuals associated in fact for the purpose of defrauding certain insurance companies by use of the mails and by committing and causing to be committed acts of arson, in violation of Section 1341, Title 18, United States Code, and Sections 806.01, 860.02, 806.06, 817.233, and 777.011, Florida statutes.

2. *Interstate Commerce:* At all times pertinent to this Indictment, the said Enterprise did engage in and its activities did affect interstate commerce.

3. *The Agreement:*

(a) It was a part of the conspiracy that the defendants

JOSEPH J. CARTER, a/k/a "Joe",
PAUL GUARINO,
FRANK SCIONTI,
JOHN THOMAS RIVERA, a/k/a "Johnny Rivera", "Scarface Rivera",
RICHARD VICTOR ARRIGO, a/k/a "Vic Rossi",
JOE GOMEZ,
JIMMY FARINA,
MANUEL EUFEMIO FERNANDEZ, JR.,
JOHN NICHOLAS LOSTRACCO,
SAM C. MARTINO,
WILLIE NORIEGA, a/k/a "Bill",
AMALIA MORGADO,
JOSEPH MACALUSO, a/k/a "Joe",
JOSEPH D. LAZZARA, a/k/a "Joe",
ROLANDO GONZALEZ RODRIGUEZ, a/k/a "Roland Rodriguez",
JOSEPH C. RUSSELLO, a/k/a "Joe",
BERTON B. CHASE, a/k/a "Bert",
ROSARIO PALERMO,
WILLIAM H. BROWN, a/k/a "Bill",
JOHN D. FISHER,
ROBERT D. YOUNG,
RICHARD W. STARK, AND
JOHN ALAN HOLT,

and others, both known and unknown to the Grand Jury, would conduct the affairs of the said Enterprise through a pattern of racketeering activity, that is:

(1) That said defendants and others, would commit and willfully cause to be committed multiple acts of mail fraud in violation of Sections 1341 and 2 of Title 18, United States Code, that is having devised and intending to devise

a scheme and artifice to defraud certain insurance companies enumerated below and to obtain money and property therefrom by means of false and fraudulent pretenses, representations and promises regarding the facts and circumstances of certain fires which damaged or destroyed certain buildings in and around the City of Tampa, Florida, and elsewhere; for purposes of executing and attempting to execute the said scheme and artifice to defraud, the said defendants and others, did knowingly and willfully place and cause to be placed envelopes in authorized depositories for mail matter to be sent and delivered according to the diretions thereon by the Postal Service of the United States, said envelopes containing Proof of Loss statements, written communications, memoranda, checks and drafts, all relating to policies, claims and properties more particularly described herein and as alleged in Counts Three through Thirty-five of the instant Indictment.

(2) That said defendants and others, would commit and willfully cause to be committed multiple acts of arson, that is, the defendants and others, both known and unknown unto the Grand Jury, with intent to defraud the insurers of buildings in Tampa, Florida, and elsewhere, intentionally caused said buildings to be burned and damaged in violation of Sections 806.01, 806.02, 806.06, 817.233, and 777.011, Florida statutes, as alleged in sub-paragraphs (34) through (56) of paragraph 5 in Count Two of the instant Indictment.

(b) It was further part of the conspiracy that, among other things, the defendant JOSEPH J. CARTER, a/k/a "Joe" would adjust numerous fraudulent property loss claims and submit the claims to certain insurance companies with knowledge that the loss was caused by arson

committed by various members of the Enterprise for the purpose of fraudulently collecting insurance monies in settlement of the fraudulent claims.

(c) It was further part of the conspiracy that, among other things, the defendant JOSEPH J. CARTER, a/k/a "Joe", would receive a portion of insurance monies received by certain members of the Enterprise for his assistance and efforts in obtaining favorable and expeditious settlements of fraudulent property loss claims adjusted by him which arose out of the arson activities of the Enterprise.

(d) It was further part of the conspiracy that, among other things, JOSEPH J. CARTER, a/k/a "Joe", would direct members of the Enterprise to particular insurance agencies for the purpose of acquiring fire insurance coverage on property intended for burning in order to increase CARTER's chances of being assigned future property adjustments arising from the Enterprise's arson activities.

(e) It was further part of the conspiracy that, among other things, the defendant JOE GOMEZ, while employed as Fire Marshal of the City of Tampa, Florida, would provide certain members of the Enterprise with information concerning current investigations being conducted by his office into the arson activities of the Enterprise in order to protect and conceal the illegal activities of the Enterprise.

(f) It was further part of the conspiracy that, among other things, SAM C. MARTINO would arrange loans for certain members of the Enterprise through his companies, Ybor Loan Company and M&S Investment Company, as well as third party investors, in order to finance the

purchase and repairs of property intended to be burned for the fraudulent recovery of insurance proceeds.

(g) It was further part of the conspiracy that, among other things, SAM C. MARTINO would utilize his real estate brokerage company, "Sam C. Martino Realty", to find and acquire property which the Enterprise would burn to fraudulently collect insurance monies.

(h) It was further part of the conspiracy that, among other things, BERTON B. CHASE, a/k/a "Bert", would arrange a loan for certain members of the Enterprise in order to finance repairs and fire insurance premiums for a building intended to be burned for the fraudulent recovery of insurance proceeds.

(i) It was further part of the conspiracy that JOSEPH J. CARTER, a/k/a "Joe", PAUL GUARINO, SAM C. MARTINO, WILLIE NORIEGA, a/k/a "Bill", JOSEPH MACALUSO, a/k/a "Joe", AMALIA MORGADO, JOHN D. FISHER, ROBERT D. YOUNG, and JOHN ALAN HOLT, would acquire and cause to be acquired certain buildings in Tampa, Florida, for the purpose of burning such building in order to fraudulently obtain insurance monies from the insurers of such buildings.

(j) It was further part of the conspiracy that PAUL GUARINO, ROSARIO PALERMO, WILLIE NORIEGA, a/k/a "Bill", JOSEPH MACALUSO, a/k/a "Joe", AMALIA MORGADO, SAM C. MARTINO, JOE GOMEZ, BERTON B. CHASE, a/k/a "Bert", JOSEPH J. CARTER, a/k/a "Joe", JOHN D. FISHER, and ROBERT D. YOUNG, would make or cause to be made minor repairs and improvements on buildings acquired for burning for

the purpose of fraudulently obtaining the maximum fire insurance coverage possible on such buildings.

(k) It was further part of the conspiracy that JOSEPH J. CARTER, a/k/a "Joe", PAUL GUARINO, FRANK SCIONTI, JOHN THOMAS RIVERA, a/k/a "Johnny Rivera", "Scarface Rivera", JOHN NICHOLAS LOSTRACCO, AMALIA MORGADO, and ROSARIO PALERMO, would arrange for members of the Enterprise to burn buildings for certain property owners in and around Tampa, Florida, and elsewhere, for the purpose of fraudulently obtaining insurance money.

(l) It was further part of the conspiracy that PAUL GUARINO, FRANK SCIONTI, WILLIE NORIEGA, a/k/a "Bill", RICHARD VICTOR ARRIGO, a/k/a "Vic Rossi", JOHN ALAN HOLT, and JOSEPH MACALUSO, a/k/a "Joe", would act as arsonists or "torches" who actually burned buildings for the Enterprise utilizing various combustible materials, hot plates and containers.

(m) It was further part of the conspiracy that JIMMY FARINA, MANUEL EUFEMIO FERNANDEZ, JR., JOSEPH D. LAZZARA, a/k/a "Joe", ROLANDO GONZALEZ RODRIGUEZ, a/k/a "Roland Rodriguez", JOSEPH C. RUSSELLO, a/k/a "Joe", ROSARIO PALERMO, WILLIAM H. BROWN, a/k/a "Bill", JOHN D. FISHER, ROBERT D. YOUNG, RICHARD W. STARK, JOHN ALAN HOLT, JOSEPH MACALUSO, a/k/a "Joe" PAUL GUARINO, WILLIE NORIEGA, a/k/a "Bill", JOE GOMEZ, AMALIA MORGADO, FRANK SCIONTI, and SAM C. MARTINO, would acquire the arson services of the Enterprise to burn buildings in which they had financial interests in order to fraudulently obtain insurance money.

(n) It was further part of the conspiracy that, among other things, the defendants JOSEPH D. LAZZARA, a/k/a "Joe", ROSARIO PALERMO, FRANK SCIONTI, ROLANDO GONZALEZ RODRIGUEZ, a/k/a "Roland Rodriguez", JOSEPH MACALUSO, a/k/a "Joe", JIMMY FARINA, WILLIE NORIEGA, a/k/a "Bill", PAUL GUARINO, AMALIA MORGADO, SAM C. MARTINO, MANUEL EUFEMIO FERNANDEZ, JR., RICHARD W. STARK, JOSEPH C. RUSSELLO, a/k/a "Joe", JOSEPH J. CARTER, a/k/a "Joe", JOHN ALAN HOLT, and others, would receive proceeds from certain bank drafts issued by insurance companies in payment and settlement of fraudulent property loss claims arising out of the numerous arsons committed and caused to be committed by members of the Enterprise.

4. *Overt Acts of the Conspiracy*:

In furtherance of the conspiracy and to effect the objects thereof, at least one of the defendants committed at least one of the following overt acts among others with respect to the following described property:

1202 East Buffalo Avenue,
Tampa, Florida

1. On or about September 28, 1972, PAUL GUARINO, FRANK SCIONTI, Lester Oates, and Robert Bradwell, willfully started and caused to be started, a fire on the premises at 1202 East Buffalo Avenue, Tampa, Florida.

3401 Twenty-fourth Street,
Tampa, Florida

2. On or about July 21, 1973, FRANK SCIONTI, PAUL GUARINO, and WILLIE NORIEGA, a/k/a "Bill",

willfully started a fire on the premises at 3401 Twenty-fourth Street, Tampa, Florida.

1811 Taliaferro Street,
Tampa, Florida

3. In or about early September, 1973, PAUL GUARINO, ROSARIO PALERMO, and WILLIE NORIEGA, a/k/a "Bill", met in Tampa, Florida and discussed burning the premises at 1811 Taliaferro Street for insurance money.

4. In or about mid-September, 1973, PAUL GUARINO, JOE GOMEZ, and WILLIE NORIEGA, a/k/a "Bill", met at the 1811 Taliaferro Street premises and GUARINO told NORIEGA that GOMEZ was a "silent partner" in the ownership of said premises.

5. On or about September 28, 1973, PAUL GUARINO, FRANK SCIONTI, and WILLIE NORIEGA, a/k/a "Bill", willfully started a fire on the premises at 1811 Taliaferro Street, Tampa, Florida.

6. On or about November 28, 1973, ROSARIO PALERMO submitted a signed and sworn statement in Proof of Loss form to Gay and Taylor, Inc., adjusters, Tampa, Florida, stating that the cause and origin of the fire loss at 1811 Taliaferro Street were "possible arson".

20410 Old Cutler Road,
Miami, Florida

7. In or about September, 1973, JOHN THOMAS RIVERA, a/k/a "Johnny Rivera", "Scarface Rivera", paid WILLIE NORIEGA approximately two hundred ($200.00) dollars to drive Hiram McElroy to the City

Wide Speed Queen Coin Laundry, at 20410 Old Cutler Road, Miami, Florida.

8. On or about October 2, 1973, PAUL GUARINO, FRANK SCIONTI and WILLIE NORIEGA, a/k/a "Bill", willfully started a fire on the laundry premises at 20410 Old Cutler Road, Miami, Florida.

9. On or about May 7, 1974, JOSEPH D. LAZZARA, a/k/a "Joe", d/b/a Conjo, Inc., submitted a sworn statement in Proof of Loss form to Allstate Insurance Company, in substantiation of a fraudulent claim, stating therein that the cause and origin of the fire loss at 20410 Old Cutler Road, were "unknown-undetermined".

2208 Tenth Street and 923 Twelfth Avenue, Tampa, Florida

10. In or about the latter part of November, 1973, WILLIE NORIEGA, a/k/a "Bill" and ROLANDO GONZALEZ RODRIGUEZ, a/k/a "Roland Rodriguez" discussed burning the buildings located at 2208 Tenth Street and 923 Twelfth Avenue, Tampa, at the El Buen Gusto Restaurant in the Ybor City Section of Tampa.

11. On or about December 1, 1973, PAUL GUARINO, WILLIE NORIEGA, a/k/a "Bill", and JOSEPH MACALUSO, a/k/a "Joe", willfully started fires at the buildings located at 2208 Tenth Street and 923 Twelfth Avenue.

12. On or about December 4, 1973, JOSEPH J. CARTER, a/k/a "Joe" acquired the insurance adjusting assignment on the fire loss claims arising from the December 1, 1973 fires at 2208 Tenth Street and 923 Twelfth Avenue.

13. On or about January 30, 1974, ROLANDO GONZALEZ RODRIGUEZ, a/k/a "Roland Rodriguez" and Julie Rodriguez filed two signed and sworn statements in Proof of Loss forms with Crawford and Company, insurance adjusters, Tampa, Florida, in substantiation of a fraudulent claim, stating therein that the cause and origin of the fire losses at 2208 Tenth Street and 923 Twelfth Avenue premises were of an "undetermined origin".

2917 and 2917½ Twentieth Avenue,
Tampa, Florida

14. In or about January, 1974, JIMMY FARINA, SAM C. MARTINO, and WILLIE NORIEGA, a/k/a "Bill", met at the Martino Real Estate office in Tampa and discussed burning the building at 2917 and 2917½ Twentieth Avenue, Tampa, for the insurance money.

15. On or about February 5, 1974, PAUL GUARINO and WILLIE NORIEGA, a/k/a "Bill", willfully started a fire on the premises at 2917 and 2917½ Twentieth Avenue, Tampa, Florida.

16. On or about May 22, 1974, JIMMY FARINA and others submitted a signed and sworn statement in Proof of Loss form with Peninsular Fire Insurance Company, in substantiation of a fraudulent claim, stating therein that the cause and origin of the fire loss at 2917 and 2917½ Twentieth Avenue were "fire of undetermined origin".

3006 North Nebraska Avenue,
Tampa, Florida

17. On or about November 13, 1973, SAM C. MARTINO arranged a loan of approximately seven thousand ($7,000.00) dollars for PAUL GUARINO and WILLIE

NORIEGA, a/k/a "Bill" for the purpose of purchasing and burning certain property located at 3006 North Nebraska Avenue, Tampa, Florida, in order to collect insurance money.

18. On or about January 24, 1974, JOSEPH MACALUSO, a/k/a "Joe" caused to be issued an insurance policy by the Sentry Indemnity Company, insuring the premises at 3006 North Nebraska Avenue, against fire loss in the amount of $20,000.00 and contents in the amount of $10,000.0.

19. On or about February 11, 1974, WILLIE NORIEGA, a/k/a "Bill" willfully started a fire on the premises at 3006 North Nebraska Avenue.

20. On or about April 11, 1974, JOSEPH J. CARTER, a/k/a "Joe", acquired a signed and sworn Proof of Loss statement from JOSEPH MACALUSO, a/k/a "Joe", with regard to the fire at 3006 North Nebraska Avenue, wherein JOSEPH MACALUSO, a/k/a "Joe", stated that the cause and origin of the fire loss were "persons responsible are unknown".

21. On or about April 16, 1974, AMALIA MORGADO, SAM C. MARTINO, JOSEPH MACALUSO, a/k/a "Joe", and WILLIE NORIEGA, a/k/a "Bill", met at the Broadway Bank in the Ybor City section of Tampa and cashed the 3006 North Nebraska fire settlement checks in the total amount of $23,000.00.

2020 East Columbus Drive,
Tampa, Florida

22. On or about January 15, 1974, SAM C. MARTINO caused to be prepared a Warranty Deed from a

Bessie Mae Williams to Bill Noriega and wife, Carol Noriega, conveying the premises located at 2020 East Columbus Drive, Tampa.

23. On or about April 15, 1974, PAUL GUARINO and WILLIE NORIEGA, a/k/a "Bill" willfully started a fire on the premises located at 2020 East Columbus Drive.

24. On or about May 7, 1974, JOSEPH J. CARTER, a/k/a "Joe", acquired a signed and sworn Proof of Loss statement from WILLIE NORIEGA, a/k/a "Bill", with regard to the April 15, 1974, fire at 2020 East Columbus Drive.

2114 Twenty-seventh Street,
Tampa, Florida

25. In or about May, 1974, JOHN NICHOLAS LOSTRACCO, PAUL GUARINO, and WILLIE NORIEGA, a/k/a "Bill", had a discussion in Tampa, Florida, about burning the premises at 2114 Twenty-seventh Street, Tampa, for the purpose of collecting the insurance money.

26. On or about May 28, 1974, WILLIE NORIEGA, a/k/a "Bill" willfully started a fire on the premises of 2114 Twenty-seventh Street.

27. On or about June 6, 1974, JOSEPH J. CARTER, a/k/a "Joe", acquired a signed and sworn statement in Proof of Loss form from Joe Bartolotti which stated therein that the cause and origin of the fire were "persons unknown set fire to insured's rental property".

409 East Oak Street,
Tampa, Florida

28. On or about September 6, 1973, PAUL GUARINO caused to be issued a fire insurance policy by the National Union Fire Insurance Company, insuring the premises at 409 East Oak Street, Tampa, against fire loss in the amount of $41,000.00.

29. In or about July, 1974, JOE GOMEZ had a discussion with PAUL GUARINO and WILLIE NORIEGA, a/k/a "Bill" in Tampa, Florida, at which time GOMEZ assured GUARINO and NORIEGA that the fire Marshal's office was not conducting a "stake-out" on the premises at 409 East Oak Street.

30. On or about July 16, 1974, PAUL GUARINO and WILLIE NORIEGA, a/k/a "Bill", willfully started a fire on the premises at 409 East Oak Street.

31. On or about July 30, 1974, PAUL GUARINO filed a signed and sworn statement in Proof of Loss form with the General Adjustment Bureau, Tampa, Florida, in substantiation of a fraudulent claim, stating therein that the cause and origin of the fire loss at 409 East Oak Street were "fire possibly caused by unknown arsonist".

3310 Vasconia Street,
Tampa, Florida

32. On or about July 23, 1974, JOHN ALAN HOLT caused to be issued a fire insurance policy by the Fireman's Fund American Insurance Company insuring the premises at 3310 Vasconia Street, Tampa, for fire and extended coverage protection for the period July 23, 1974 to July 23, 1975.

33. On or about July 31, 1974, JOHN ALAN HOLT caused the dwelling coverage limits on his fire insurance

policy with Safeco Insurance Company insuring the premises at 3310 Vasconia Street to be raised from $20,000.00 to $30,000.00.

34. On or about August 2, 1974, AMALIA MORGADO delivered unto WILLIE NORIEGA, a/k/a "Bill", a one thousand ($1,000.00) dollar check, number 513, payable to cash and drawn on the Peoples Bank of Tampa, as partial payment to NORIEGA and RICHARD VICTOR ARRIGO, a/k/a "Vic Rossi", for burning the premises at 3310 Vasconia Street, Tampa.

35. On or about August 3, 1974, RICHARD VICTOR ARRIGO, a/k/a "Vic Rossi" and WILLIE NORIEGA, a/k/a "Bill", willfully started a fire on the premises at 3310 Vasconia Street.

36. On or about October 11, 1974, JOHN ALAN HOLT filed a signed and sworn Proof of Loss statement with Safeco Insurance Company, in substantiation of a fraudulent claim, stating therein that the cause of the fire loss at 3310 Vasconia Street was "fire of unknown origin".

4509 West Alva Street,
Tampa, Florida

37. On or about August 1, 1974, PAUL GUARINO delivered a kerosene drum to WILLIE NORIEGA, a/k/a "Bill", in Tampa, Florida.

38. On or about August 4, 1974, RICHARD VICTOR ARRIGO, a/k/a "Vic Rossi" and WILLIE NORIEGA, a/k/a "Bill", willfully started a fire at 4509 West Alva Street, Tampa.

39. On or about September 26, 1974, MANUEL EUFEMIO FERNANDEZ, JR. submitted a signed and sworn

statement in Proof of Loss form with Crawford & Company, Insurance Adjusters, Tampa, Florida, in substantiation of a fraudulent claim, stating therein that the cause and origin of the fire loss at 4509 West Alva Street were "unknown to insured".

2701 S. MacDill Avenue,
Tampa, Florida

40. On or about September 1, 1974, RICHARD W. STARK, RICHARD VICTOR ARRIGO, a/k/a "Vic Rossi", and WILLIE NORIEGA, a/k/a "Bill", met at Pam Liquors, Tampa, Florida, and discussed burning the premises at 2701 S. MacDill Avenue, Tampa, for the purpose of collecting the insurance money.

41. On or about September 5, 1974, WILLIE NORIEGA, a/k/a "Bill", willfully started a fire on the premises at 2701 S. MacDill Avenue.

42. On or about September 23, 1974, RICHARD W. STARK and his wife, Alice, submitted a signed and sworn statement in Proof of Property Loss form to Sentry Insurance Company, in substantiation of a fraudulent claim, stating therein that the manner in which the fire loss occurred at 2701 S. MacDill Avenue was "loss by fire—premises totally destroyed; the insured has no knowledge of any persons known or suspected to have been implicated in loss".

316 E. Park Avenue,
Tampa, Florida

43. In or about July, 1975, PAUL GUARINO, FRANK SCIONTI and WILLIE NORIEGA, a/k/a "Bill", met in Tampa, Florida, and discussed burning the

premises at 316 E. Park Avenue, Tampa, at the behest of ROSARIO PALERMO.

44. On or about July 24, 1975, WILLIE NORIEGA, a/k/a "Bill", willfully started a fire on the premises at 316 E. Park Avenue.

45. On or about July 24, 1975, PAUL GUARINO and FRANK SCIONTI acted as "lookouts" for WILLIE NORIEGA, a/k/a "Bill" while he started a fire at the 316 E. Park Avenue premises.

46. In or about August, 1975, JOSEPH J. CARTER, a/k/a "Joe" and WILLIE NORIEGA, a/k/a "Bill", met in Tampa, Florida, and discussed settlement of the fire loss claim at 316 E. Park Avenue.

4601 W. Kennedy Boulevard,
Tampa, Florida

47. In or about June, 1975, in Tampa, Florida, JOSEPH C. RUSSELLO, a/k/a "Joe", BERTON B. CHASE, a/k/a "Bert", and WILLIE NORIEGA, a/k/a "Bill", discussed CHASE lending RUSSELLO ten thousand ($10,000.00) dollars which was to be paid NORIEGA for burning the 4601 W. Kennedy Boulevard premises for RUSSELLO.

48. In or about August, 1975, AMALIA MORGADO and WILLIE NORIEGA, a/k/a "Bill" had a telephone conversation in Tampa, Florida, and discussed burning an automobile belonging to JOHN ALAN HOLT.

49. On or about August 17, 1975, WILLIE NORIEGA, a/k/a "Bill" willfully started a fire at the premises located at 4601 W. Kennedy Boulevard, which damaged a 1973 Ford Gran Torino station wagon owned by JOSEPH D. LAZZARA, a/k/a "Joe", a 1972 Pontiac Ventura owned

by JOHN ALAN HOLT, as well as the 4601 W. Kennedy Boulevard premises.

50. On or about August 20, 1975, JOSEPH J. CARTER, a/k/a "Joe" acquired a signed and sworn partial Proof of Loss statement from JOSEPH C. RUSSELLO, a/k/a "Joe" in substantiation of a fraudulent claim with regard to the August 17, 1975 fire loss at 4601 W. Kennedy Boulevard.

2510 Twelfth Street,
Tampa, Florida

51. On or about December 20, 1973, SAM C. MARTINO, as president of M & S Investment Corporation, acquired an option to purchase the premises at 2510 Twelfth Street, Tampa, Florida, on behalf of PAUL GUARINO, WILLIE NORIEGA, a/k/a "Bill", and himself for the purpose of burning said premises.

52. In or about May, 1974, PAUL GUARINO paid SAM C. MARTINO one thousand five hundred ($1,500.00) dollars in consideration for MARTINO's assignment to Alexander Fekete of the option to purchase the premises at 2510 Twelfth Street.

53. In or about June, 1974, PAUL GUARINO, JOE GOMEZ, and WILLIE NORIEGA, a/k/a "Bill", met at the residence of GOMEZ' sister located on Cypress Street, Tampa, and GOMEZ delivered two thousand ($2,000.00) dollars to GUARINO and NORIEGA to purchase an interest in the 2510 Twelfth Street premises.

54. On or about July 31, 1974, BERTON B. CHASE, a/k/a "Bert", drove Alexander Fekete to the Castaways Lounge in Tampa to meet WILLIE NORIEGA, a/k/a "Bill".

55. On or about July 31, 1974, Alexander Fekete delivered approximately four thousand two hundred ($4,-200.00) dollars to RICHARD VICTOR ARRIGO, a/k/a "Vic Rossi" at the Castaways Lounge, Tampa.

56. On or about August 26, 1975, BERTON B. CHASE, a/k/a "Bert" and WILLIE NORIEGA, a/k/a "Bill" met at CHASE'S office in Tampa, at which time CHASE told NORIEGA to burn the 2510 Twelfth Street premises immediately.

57. On or about August 26, 1975, WILLIE NORIEGA, a/k/a "Bill", willfully started a fire on the premises at 2510 Twelfth Street.

8422 Lopez Drive,
Tampa, Florida

58. On or about September 20, 1975, JOSEPH J. CARTER, a/k/a "Joe", WILLIE NORIEGA, a/k/a "Bill", and Francis Carlevale met at CARTER'S office in Tampa, Florida, and discussed burning the premises at 8422 Lopez Drive, Tampa, for the insurance money.

59. On or about September 29, 1975, WILLIAM H. BROWN, a/k/a "Bill", drove WILLIE NORIEGA, a/k/a "Bill" to the premises at 8422 Lopez Drive so that NORIEGA could burn the premises.

3658 S. Westshore Boulevard,
Tampa, Florida

60. In or about August, 1975, JOSEPH J. CARTER, a/k/a "Joe", WILLIAM H. BROWN, a/k/a "Bill", and WILLIE NORIEGA, a/k/a "Bill" met at the Village Pub, Tampa, Florida, and discussed burning the Hardware Store at 3658 S. Westshore Boulevard, Tampa, Florida.

61. On or about October 27, 1975, WILLIE NORIEGA, a/k/a "Bill" willfully started a fire on the Hardware Store premises at 3658 S. Westshore Boulevard.

3012 Highland Avenue,
Tampa, Florida

62. On or about November 6, 1975, PAUL GUARINO and WILLIE NORIEGA, a/k/a "Bill" willfully started a fire on the premises located at 3012 Highland Avenue, Tampa, Florida.

8909 N. Florida Avenue,
Tampa, Florida

63. On or about March 27, 1976, JOHN THOMAS RIVERA, a/k/a "Johnny Rivera", "Scarface Rivera" delivered to WILLIE NORIEGA, a/k/a "Bill", several trash cans containing gasoline while RIVERA and NORIEGA were at RIVERA's residence on Davis Island, Tampa, Florida.

1907-15 N. Armenia Avenue,
Tampa, Florida

64. In or about December, 1975, JOSEPH J. CARTER, a/k/a "Joe" and WILLIE NORIEGA, a/k/a "Bill" met in Tampa, Florida, at which time, CARTER instructed NORIEGA to purchase the premises at 1907-15 N. Armenia Avenue, Tampa, Florida, for the purpose of burning it for insurance money.

65. On or about January 1, 1976, William Hiram Fisher purchased the premises at 1907-15 N. Armenia Avenue.

66. In or about February, 1976, JOHN D. FISHER, ROBERT D. YOUNG, and WILLIE NORIEGA, a/k/a

"Bill" met at the Sportsman Lounge, in Tampa, and discussed the purchase of the premises at 1907-15 N. Armenia Avenue, for the purpose of burning it for insurance money.

67. On or about February 26, 1976, JOHN D. FISHER purchased the premises at 1907-15 N. Armenia Avenue from William Hiram Fisher.

68. On or about April 13, 1976, JOHN ALAN HOLT and WILLIE NORIEGA, a/k/a "Bill" willfully started a fire on the premises at 1907-15 N. Armenia Avenue.

69. On or about May 19, 1976, JOHN D. FISHER caused to be submitted signed and sworn Proof of Loss statement forms to Monarch Adjusting, Inc., Ft. Lauderdale, Florida, in substantiation of a fraudulent claim, stating therein that the cause and origin of the fire at "1909-1915" N. Armenia Avenue were "fire".

All in violation of Section 1962(d), Title 18, United States Code.

THE GRAND JURY FURTHER CHARGES:

COUNT TWO

That continuously from in or about September, 1972, and continuously thereafter up to and including the date of the filing of this Indictment, in the Middle District of Florida and elsewhere,

JOSEPH J. CARTER, a/k/a "Joe",
PAUL GUARINO,
FRANK SCIONTI,
JOHN THOMAS RIVERA, a/k/a
"Johnny Rivera", "Scarface Rivera",
RICHARD VICTOR ARRIGO, a/k/a
"Vic Rossi",

JOE GOMEZ,
JIMMY FARINA,
MANUEL EUFEMIO FERNANDEZ, JR.,
JOHN NICHOLAS LOSTRACCO,
SAM C. MARTINO,
WILLIE NORIEGA, a/k/a "Bill",
AMALIA MORGADO,
JOSEPH MACALUSO, a/k/a "Joe",
JOSEPH D. LAZZARA, a/k/a "Joe",
ROLANDO GONZALEZ RODRIGUEZ,
a/k/a "Roland Rodriguez",
JOSEPH C. RUSSELLO, a/k/a "Joe",
ROSARIO PALERMO,
WILLIAM H. BROWN, a/k/a "Bill",
JOHN D. FISHER,
ROBERT D. YOUNG,
RICHARD W. STARK, AND
JOHN ALAN HOLT,

the defendants herein, and others who are both known and unknown to the Grand Jury, unlawfully, knowingly, and willfully, did conduct and participate, directly and indirectly, in the conduct of the affairs of an enterprise through a pattern of racketeering activity as hereinafter described:

1. That the aforesaid defendants,

JOSEPH J. CARTER, a/k/a "Joe",
PAUL GUARINO,
FRANK SCIONTI,
JOHN THOMAS RIVERA, a/k/a
"Johnny Rivera", "Scarface Rivera",
RICHARD VICTOR ARRIGO, a/k/a
"Vic Rossi",
JOE GOMEZ,
JIMMY FARINA,
MANUEL EUFEMIO FERNANDEZ, JR.,
JOHN NICHOLAS LOSTRACCO,

SAM C. MARTINO,
WILLIE NORIEGA, a/k/a "Bill",
AMALIA MORGADO,
JOSEPH MACALUSO, a/k/a "Joe",
JOSEPH D. LAZZARA, a/k/a "Joe",
ROLANDO GONZALEZ RODRIGUEZ, a/k/a "Roland Rodriguez",
JOSEPH C. RUSSELLO, a/k/a "Joe",
ROSARIO PALERMO,
WILLIAM H. BROWN, a/k/a "Bill",
JOHN D. FISHER,
ROBERT D. YOUNG,
RICHARD W. STARK, AND
JOHN ALAN HOLT,

were associated together in fact as an Enterprise, as described by Title 18, United States Code, Section 1961(4), to-wit: a group of individuals associated in fact for the purpose of defrauding certain insurance companies by use of the mails, and by committing acts of arson, in violation of Section 1341, Title 18, United States Code, and Sections 806.01, 806.02, 806.06, 817.233, and 777.011, Florida statutes.

2. At all times pertinent to this Indictment, said Enterprise did engage in and its activities did affect interstate commerce.

3. At all times pertinent to this Indictment, the defendants conducted the affairs of said Enterprise through a pattern of racketeering activity, that is:

(a) Said defendants and others, did commit and willfully cause to be committed multiple acts of mail fraud in violation of Sections 1341 and 2 of Title 18, United States Code, that is, having devised and intending to devise a scheme and artifice to defraud certain insurance

companies enumerated below and to obtain money and property therefrom by means of false and fraudulent pretenses, representations and promises regarding the facts and circumstances of certain fires which damaged or destroyed certain buildings in and around Tampa, Florida, and elsewhere; for purposes of executing and attempting to execute the said scheme and artifice to defraud, the said defendants, and others, did knowingly and willfully place and cause to be placed envelopes in authorized depositories for mail matter to be sent and delivered according to the directions thereon by the Postal Service of the United States, said envelopes containing Proof of Loss statements, written communications, memoranda, checks, and drafts, all relating to policies, claims and properties more particularly described herein and as alleged in Counts Three through Thirty-Five of the instant Indictment.

(b) That said defendants and others, did commit and willfully cause to be committed multiple acts of arson, that is, said defendants, with intent to defraud the insurers of buildings, intentionally caused said buildings to be burned and damaged in violation of Sections 806.01, 806.02, 806.06, 817.233, and 777.011, Florida statutes, as more particularly alleged in sub-paragraphs (34) through (56) of paragraph 5 below of Count Two of the instant Indictment.

4. The following acts of racketeering activity, among others, were committed in the course of conducting the Enterprise's affairs:

5. *Acts of racketeering*: (1) through (33): Counts Three through Thirty-Five of the Indictment are incorpo-

rated and made a part of Count Two herein as separate and distinct acts of racketeering as though fully set forth and described herein as acts of racketeering.

(34) On or about September 28, 1972, PAUL GUARINO and FRANK SCIONTI, did willfully and maliciously set fire to, burn, cause to be burned, and aid, counsel and procure the burning of a building at 1202 East Buffalo Avenue, Tampa, Florida, which building was insured at that time against loss or damage by fire, with intent to defraud the insurer of that building, contrary to Sections 806.02 and 806.06, Florida statutes (1971).

(35) On or about July 21, 1973, PAUL GUARINO, FRANK SCIONTI, and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously set fire to, burn, cause to be burned, and aid, counsel and procure the burning of a dwelling house at 3401 Twenty-fourth Street, Tampa, Florida, which dwelling house was insured at that time against loss or damage by fire, with intent to defraud the insurer of that dwelling house, contrary to Sections 806.01 and 806.06, Florida statutes (1973).

(36) On or about September 28, 1973, PAUL GUARINO, FRANK SCIONTI, JOE GOMEZ, ROSARIO PALERMO, and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously set fire to, burn, cause to be burned, and aid, counsel and procure the burning of a dwelling house at 1811 Taliaferro Street, Tampa, Florida, which dwelling house was insured at that time against loss or damage by fire, with intent to defraud the insurer of that dwelling house, contrary to Sections 806.01 and 806.06, Florida statutes (1973).

(37) On or about October 2, 1973, JOSEPH D. LAZZARA, a/k/a "Joe", JOHN THOMAS RIVERA, a/k/a "Johnny Rivera", "Scarface Rivera", PAUL GUARINO, FRANK SCIONTI, and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously set fire to, burn, cause to be burned, and aid, counsel and procure the burning of a building at 20410 Old Cutler Road, Miami, Florida, which building was insured at that time against loss or damage by fire, with intent to defraud the insurer of that building, contrary to Sections 806.02 and 806.06, Florida statutes (1973).

(38) On or about December 1, 1973, ROLANDO GONZALEZ RODRIGUEZ, a/k/a "Roland Rodriguez", JOSEPH J. CARTER, a/k/a "Joe", PAUL GUARINO, WILLIE NORIEGA, a/k/a "Bill", and JOSEPH MACALUSO, a/k/a "Joe", did willfully and maliciously set fire to, burn, cause to be burned, and aid, counsel and procure the burning of dwelling houses at 2208 Tenth Street and 923 Twelfth Avenue, Tampa, Florida, which dwelling houses were insured at that time against loss or damage by fire, with intent to defraud the insurer of those dwellings, contrary to Sections 806.01 and 806.06, Florida statutes (1973).

(39) On or about February 5, 1974, JIMMY FARINA, SAM C. MARTINO, PAUL GUARINO, and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously set fire to, burn, cause to be burned, and aid, counsel and procure the burning of a dwelling house at 2917 and 2917½ Twentieth Avenue, Tampa, Florida, which dwelling house was insured at that time against loss or damage by fire, with intent to defraud the insurer of that dwelling,

contrary to Sections 806.01 and 806.06, Florida statutes (1973).

(40) On or about February 11, 1974, JOSEPH MACALUSO, a/k/a "Joe", SAM C. MARTINO, JOSEPH J. CARTER, a/k/a "Joe", AMALIA MORGADO, PAUL GUARINO, and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously set fire to, burn, cause to be burned, and aid, counsel and procure the burning of a dwelling house at 3006 North Nebraska Avenue, Tampa, Florida, which dwelling house was insured at that time against loss or damage by fire, with intent to defraud the insurer of that dwelling, contrary to Sections 806.01 and 806.06, Florida statutes (1973).

(41) On or about April 15, 1974, SAM C. MARTINO, JOE GOMEZ, JOSEPH J. CARTER, a/k/a "Joe", PAUL GUARINO, and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously set fire to, burn, cause to be burned, and aid, counsel and procure the burning of a dwelling house at 2020 East Columbus Drive, Tampa, Florida, which dwelling house was insured at that time against loss or damage by fire, with intent to defraud the insurers of that dwelling, contrary to Sections 806.01 and 806.06, Florida statutes (1973).

(42) On or about May 28, 1974, JOHN NICHOLAS LOSTRACCO, JOSEPH J. CARTER, a/k/a "Joe", PAUL GUARINO, and WILLIE NORIEGA, a/k/a "Bill", did willfully and mailciously set fire to, burn, cause to be burned, and aid, counsel and procure the burning of a dwelling house at 2114 Twenty-seventh Street, Tampa, Florida, which dwelling house was insured at that time against loss or damage by fire, with intent to defraud the

insurer of that dwelling, contrary to Sections 806.01 and 806.06, Florida statutes (1973).

(43) On or about July 16, 1974, PAUL GUARINO, JOSEPH J. CARTER, a/k/a "Joe", JOE GOMEZ, and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously set fire to, burn, cause to be burned, and aid, counsel and procure the burning of a dwelling house at 409 East Oak Street, Tampa, Florida, which dwelling house was insured at that time against loss or damage by fire, with intent to defraud the insurer of that dwelling, contrary to Sections 806.01 and 806.06, Florida statutes (1973).

(44) On or about August 3, 1974, JOHN ALAN HOLT, AMALIA MORGADO, JOSEPH MACALUSO, a/k/a "Joe", RICHARD VICTOR ARRIGO, a/k/a "Vic Rossi", and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously set fire to, burn, cause to be burned, and aid, counsel and procure the burning of a dwelling house at 3310 Vasconia Street, Tampa, Florida, which dwelling house was insured at that time against loss or damage by fire, with intent to defraud the insurers of that dwelling, contrary to Sections 806.01 and 806.06, Florida statutes (1973).

(45) On or about August 4, 1974, MANUEL EUFEMIO FERNANDEZ, JR., PAUL GUARINO, RICHARD VICTOR ARRIGO, a/k/a "Vic Rossi", and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously set fire to, burn, cause to be burned, and aid, counsel and procure the burning of a building at 4509 West Alva Street, Tampa, Florida, which building was insured at that time against loss or damage by fire, with intent to defraud the

insurer of that building, contrary to Sections 806.02 and 806.06, Florida statutes (1973).

(46) On or about September 5, 1974, RICHARD W. STARK, RICHARD VICTOR ARRIGO, a/k/a "Vic Rossi", and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously set fire to, burn, cause to be burned, and aid, counsel and procure the burning of a building at 2701 S. MacDill Avenue, Tampa, Florida, which building was insured at that time against loss or damage by fire, with intent to defraud the insurer of that building, contrary to Sections 806.02 and 806.06, Florida statutes (1973).

(47) On or about July 24, 1975, ROSARIO PALERMO, JOSEPH J. CARTER, a/k/a "Joe", PAUL GUARINO, FRANK SCIONTI, and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously, by means of fire, damage, and aid, abet, counsel and procure the damaging by fire of a building at 316 E. Park Avenue, Tampa, Florida, which building was insured at that time against loss or damage by fire, with intent to defraud the insurer of that building, contrary to Sections 806.01(2), 817.233, and 777.011, Florida statutes (1974).

(48) On or about August 17, 1975, JOSEPH C. RUSSELLO, a/k/a "Joe", JOSEPH D. LAZZARA, a/k/a "Joe", JOSEPH J. CARTER, a/k/a "Joe", and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously set fire to, burn, cause to be burned, damage by fire, and aid, abet, counsel and procure the burning of a building at 4601 W. Kennedy Boulevard, Tampa, Florida, which building was insured at that time against loss or damage by fire, with intent to defraud the insurer of that building, con-

trary to Sections 806.02 and 806.06, Florida statutes (1973) and 806.01(2), 817.233 and 777.011, Florida statutes (1974).

(49) On or about August 17, 1975, JOSEPH D. LAZZARA, a/k/a "Joe", and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously, by means of fire, damage and aid, abet, counsel and procure the damaging by fire of a vehicle, to-wit: a 1973 Ford Gran Torino station wagon, which vehicle was insured at that time against loss or damage by fire, with intent to defraud the insurer of that vehicle, contrary to Sections 806.01(2), 817.233, and 777.011, Florida statutes (1974).

(50) On or about August 17, 1975, JOHN ALAN HOLT, AMALIA MORGADO, and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously, by means of fire, damage and aid, abet, counsel and procure the damaging by fire of a vehicle, to-wit: a 1972 Pontiac Ventura automobile, which vehicle was insured at that time against loss or damage by fire, with intent to defraud the insurer of that vehicle, contrary to Sections 806.01(2), 817.233, and 777.011, Florida statutes (1974).

(51) On or about August 26, 1975, SAM C. MARTINO, BERTON B. CHASE, a/k/a "Bert", JOE GOMEZ, JOSEPH J. CARTER, a/k/a "Joe", RICHARD VICTOR ARRIGO, a/k/a "Vic Rossi", PAUL GUARINO, and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously, set fire to, burn, cause to be burned, damage by fire, and aid, abet, counsel and procure the burning of a building at 2510 Twelfth Street, Tampa, Florida, which building was insured at that time against loss or damage by fire, with intent to defraud the insurer of that building, contrary to Sections 806.02 and 806.06, Florida statutes

(1973) and 806.01(2), 817.233, and 777.011, Florida statutes (1974).

(52) On or about September 29, 1975, JOSEPH J. CARTER, a/k/a "Joe", and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously, by means of fire, damage, and aid, abet, counsel and procure the damaging by fire of a building at 8422 Lopez Drive, Tampa, Florida, which building was insured at that time against loss or damage by fire, with intent to defraud the insurer of that building, contrary to Sections 806.01(2), 817.233, and 777.011, Florida statutes (1974).

(53) On or about October 27, 1975, JOSEPH J. CARTER, a/k/a "Joe", WILLIAM H. BROWN, a/k/a "Bill", PAUL GUARINO, and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously, by means of fire, damage, and aid, abet, counsel and procure the damaging by fire of a building at 3658 S. Westshore Boulevard, Tampa, Florida, which building was insured at that time against loss or damage by fire, with intent to defraud the insurer of that building, contrary to Sections 806.01(2), 817.233, and 777.011, Florida statutes (1974).

(54) On or about November 6, 1975, PAUL GUARINO and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously, by means of fire, damage, and aid, abet, counsel and procure the damaging by fire of a building at 3012 Highland Avenue, Tampa, Florida, which building was insured at that time against loss or damage by fire, with intent to defraud the insurer of that building, contrary to Sections 806.01(2), 817.233, and 777.011, Florida statutes (1975).

(55) On or about March 27, 1976, JOHN THOMAS RIVERA, a/k/a "Johnny Rivera", "Scarface Rivera", and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously, by means of fire, damage, and aid, abet, counsel and procure the damaging by fire of a building at 8909 N. Florida Avenue, Tampa, Florida, which building was insured at that time against loss or damage by fire, with intent to defraud the insurer of that building, contrary to Sections 806.01(2), 817.233, and 777.011, Florida statutes (1975).

(56) On or about April 13, 1976, JOHN D. FISHER, ROBERT D. YOUNG, JOSEPH J. CARTER, a/k/a "Joe", JOHN ALAN HOLT, and WILLIE NORIEGA, a/k/a "Bill", did willfully and maliciously, by means of fire, damage, and aid, abet, counsel and procure the damaging by fire of a building at 1907-15 N. Armenia Avenue, Tampa, Florida, which building was insured at that time against loss or damage by fire, with intent to defraud the insurers of that building, contrary to Sections 806.01(2), 817.233, and 777.011, Florida statutes (1975).

6. *Forfeitures:*

(1) Through the aforesaid pattern of racketeering activity, on or about January 25, 1974, draft number F96052, drawn on the account of Jefferson Insurance Company of New York, was made payable and was paid to ROSARIO PALERMO and Broadway National Bank in the amount of $10,000.00 on an insurance policy issued to ROSARIO PALERMO for the premises located at 1811 Taliaferro Street, Tampa, Florida, of which PAUL GUARINO, JOE GOMEZ, and ROSARIO PALERMO, each received a one-

third share of said amount, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(2) Through the aforesaid pattern of racketeering activity, on or about May 2, 1974, draft number 41 544898, drawn on the account of Allstate Insurance Company, was made payable and was paid to Conjo, Inc., JOSEPH LAZZARA and his attorney, Frederick Joiner in the amount of $12,117.00 on an insurance policy issued to Conjo, Inc. for the premises located at 20410 Old Cutler Road, Miami, Florida, of which JOSEPH D. LAZZARA, a/k/a "Joe" received the entire amount, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(3) Through the aforesaid pattern of racketeering activity, on or about February 19, 1974, draft number 41 503378, drawn on the account of Allstate Insurance Company, was made payable and was paid to JOSEPH D. LAZZARA, a/k/a "Joe", Conjo, Inc., and First National Bank, Ft. Lauderdale, Florida, in the amount of $3,000.00, on an insurance policy issued to Conjo, Inc. as insured for the premises located at 20410 Old Cutler Road, Miami, Florida, of which JOSEPH D. LAZZARA, a/k/a "Joe" received the entire amount, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963 (a) & (c).

(4) Through the aforesaid pattern of racketeering activity, on or about February 7, 1974, draft number F-

94147, drawn on the account of Jefferson Insurance Company of New York, was made payable and was paid to Mr. and Mrs. Roland Rodriguez and Margaret Gonzalez in the amount of $3,000.00 on an insurance policy issued to Mr. and Mrs. Roland Rodriguez for the premises located at 2208 Tenth Street, Tampa, Florida, of which ROLANDO GONZALEZ RODRIGUEZ, a/k/a "Roland Rodriguez", received the entire amount, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(5) Through the aforesaid pattern of racketeering activity, on or about February 7, 1974, draft number F-94145, drawn on the account of Jefferson Insurance Company of New York, was made payable and was paid to Mr. and Mrs. Roland Rodriguez and Margaret Gonzalez in the amount of $1,226.83 on an insurance policy issued to Mr. and Mrs. Roland Rodriguez for the premises located at 923 Twelfth Avenue, Tampa, Florida, of which ROLANDO GONZALEZ RODRIGUEZ, a/k/a "Roland Rodriguez", received the entire amount, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(6) Through the aforesaid pattern of racketeering activity, on or about June 27, 1974, draft number GF 79603, drawn on the account of Peninsular Fire Insurance Company, was made payable to Maria Farina, JIMMY FARINA, John S. Farina, and A. C. Martino, attorney at law, in the amount of $4,000.00 on an insurance policy issued to Maria Farina and the estate of J. A. Farina as

insureds for the premises located at 2917 and 2917-½ Twelfth Avenue, Tampa, Florida, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(7) Through the aforesaid pattern of racketeering activity, on or about April 15, 1974, draft number 3370200, drawn on the account of Sentry Insurance Company, was made payable to JOSEPH MACALUSO, Peter L. Spoto, Alice Spoto, and Ybor Loan Company, in the amount of $20,000.00 on an insurance policy issued to JOSEPH MACALUSO, a/k/a "Joe" for the premises located at 3006 North Nebraska Avenue, Tampa, Florida, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(8) Through the aforesaid pattern of racketeering activity, on or about April 15, 1974, draft number 3370201, drawn on the account of Sentry Insurance Company, was made payable to JOSEPH MACALUSO, in the amount of $3,000.00 on an insurance policy issued to JOSEPH MACALUSO, as insured for the premises located at 3006 North Nebraska Avenue, Tampa, Florida, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(9) Through the aforesaid pattern of racketeering activity, on or about May 3, 1974, draft number 65819, drawn on the account of Southeastern Fidelity Insurance Company, was made payable to Bill Noriega and Carol Noriega, SAM MARTINO and Ybor Loan Company and

Lena Ferlita in the amount of $7,894.74 on an insurance policy issued to WILLIE NORIEGA, a/k/a "Bill" as insured for the premises located at 2020 East Columbus Drive, Tampa, Florida, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963 (a) & (c).

(10) Through the aforesaid pattern of racketeering activity, on or about May 3, 1974, draft number 65818, drawn on the account of Southeastern Fidelity Insurance Company, was made payable to Bessie Williams and Carl G. Rassler, her attorney, and Bill Noriega and Carol Noriega, and Lena Ferlita and Ybor Loan Company and SAM MARTINO, in the amount of $4,210.53 on an insurance policy issued to WILLIE NORIEGA, a/k/a "Bill" as insured for the premises located at 2020 East Columbus Drive, Tampa, Florida, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963 (a) & (c).

(11) Through the aforesaid pattern of racketeering activity, on or about June 6, 1974, draft number 67133, drawn on the account of Southeastern Fidelity Insurance Company, was made payable to Bill and Carol Noriega and SAM MARTINO, in the amount of $7,105.77 on an insurance policy issued to WILLIE NORIEGA, a/k/a "Bill" as insured for the premises located at 2020 East Columbus Drive, Tampa, Florida, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(12) Through the aforesaid pattern of racketeering activity, on or about May 3, 1974, draft number F 4628, drawn on the account of Financial Fire & Casualty Company, was made payable to Bill Noriega and Carol Noriega, attorney Carl G. Rassler, Bessie Williams, Lena Ferlita, and Ybor Loan Company, in the amount of $7,894.73 on an insurance policy issued to WILLIE NORIEGA, a/k/a "Bill" for the premises located at 2020 East Columbus Drive, Tampa, Florida, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(13) Through the aforesaid pattern of racketeering activity, JOSEPH J. CARTER, a/k/a "Joe", received $3,000.00 of the proceeds heretofore enumerated in sub-paragraph (9) through (12) above, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(14) Through the aforesaid pattern of racketeering activity, SAM C. MARTINO received $2,500.00 from the proceeds enumerated in sub-paragraph (9) through (12) above, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(15) Through the aforesaid pattern of racketeering activity, PAUL GUARINO received $4,000.00 of the proceeds enumerated in sub-paragraph (9) through (12) above, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(16) Through the aforesaid pattern of racketeering activity, WILLIE NORIEGA, a/k/a "Bill" received $14,000.00 of the proceeds enumerated and set forth in subparagraph (9) through (12) above, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(17) Through the aforesaid pattern of racketeering activity, on or about March 25, 1976, draft number 23-64-15, drawn on the account of National Union Fire Insurance Company, was made payable and was paid to PAUL GUARINO and Michael L. Kinney in the amount of $10,000.00 on an insurance policy issued to PAUL GUARINO as insured for the premises located at 409 East Oak Street, Tampa, Florida, of which PAUL GUARINO received the entire amount, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(18) Through the aforesaid pattern of racketeering activity, on or about March 11, 1975, draft number 840317-373, on the account of Crum and Forster Insurance Companies, was made payable and was paid to All American Electric, Inc. and Rudy G. LaRussa, in the amount of $35,000.00 on an insurance policy issued to All American Electric, Inc. as insured for the premises located at 4509 West Alva Street, Tampa, Florida, of which MANUEL EUFEMIO FERNANDEZ, JR., received the entire amount, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(19) Through the aforesaid pattern of racketeering activity, on or about March 11, 1975, draft number 840317-

364, drawn on the account of Crum and Forester Insurance Companies, was made payable and paid to All American Electric, Inc. and Joseph Sacco and Rosalie Sacco, Electric Supply of Tampa, Inc., and Rudy G. LaRussa, in the amount of $40,000.00 on an insurance policy issued to All American Electric, Inc. as insured for the premises located at 4509 West Alva Street, Tampa, Florida, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(20) Through the aforesaid pattern of racketeering activity, on or about November 4, 1975, draft number B51974, drawn on the account of Cincinnati Financial Corporation, was made payable and paid unto JOSEPH C. RUSSELLO and Arline Russello, in the amount of $28,-852.66 on an insurance policy issued to JOSEPH C. RUSSELLO, Arline B. Russello, Charles A. Russello and Frances R. Russello, d/b/a JOSEPH C. RUSSELLO and Associates, as insureds for the premises located at 4601-29 West Kennedy Boulevard, Tampa, Florida, of which JOSEPH C. RUSSELLO received the entire amount, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(21) Through the aforesaid pattern of racketeering activity, on or about October 10, 1975, draft number B48927, drawn on the account of Cincinnati Financial Corporation, was made payable and paid to JOSEPH C. RUSSELLO and Pilot Life Insurance Company, in the amount of $161,190.43 on an insurance policy issued to JOSEPH C. RUSSELLO, Arline B. Russello, Charles A. Russello

and Frances R. Russello, d/b/a JOSEPH C. RUSSELLO and Associates, as insureds for the premises located at 4601-29 West Kennedy Boulevard, Tampa, Florida, of which JOSEPH C. RUSSELLO received the entire amount, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(22) Through the aforesaid pattern of racketeering activity, on or about September 19, 1975, draft number B45166, drawn on the account of Cincinnati Financial Corporation, was made payable and paid to JOSEPH RUSSELLO and Arline Russello and Pilot Life Insurance Company, in the amount of $75,000.00 on an insurance policy issued to JOSEPH C. RUSSELLO, Arline B. Russello, Charles A. Russello and Frances R. Russello, d/b/a JOSEPH C. RUSSELLO and Associates, as insureds for the premises located at 4601-29 West Kennedy Boulevard, Tampa, Florida, of which JOSEPH C. RUSSELLO received the entire amount, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(23) Through the aforesaid pattern of racketeering activity, on or about August 25, 1975, draft number B40023, drawn on the account of Cincinnati Financial Corporation, was made payable and paid to JOSEPH C. RUSSELLO and Pilot Life Insurance Company, in the amount of $75,000.00 on an insurance policy issued to JOSEPH C. RUSSELLO, Arline B. Russello, Charles A. Russello and Frances R. Russello, d/b/a JOSEPH C. RUSSELLO and Associates, as insureds for the premises located at 4601-29 West Kennedy Boulevard, Tampa, Florida, of which JO-

SEPH C. RUSSELLO received the entire amount, which said interest and property is subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(24) Through the aforesaid pattern of racketeering activity, JOSEPH C. RUSSELLO, a/k/a "Joe", maintained in violation of Title 18, United States Code, Section 1962, ownership interest and property rights in and to JOSEPH C. RUSSELLO, Associates, a Florida Corporation, which afforded a source of influence over the Enterprise herein described, and which said ownership interest and property rights are subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(25) Through the aforesaid pattern of racketeering activity, JOSEPH C. RUSSELLO, a/k/a "Joe", maintained in violation of Title 18, United States Code, Section 1962, ownership interest and property rights in and to the premises located at 4601 West Kennedy Boulevard, Tampa, Florida, being more particularly described as:

> Lot 14, Black 2, Hanan Park, revised unit number 1, Tampa, Florida, together with the buildings and any and all other improvements thereon situated and pertaining thereto.

which afforded a source of influence over the Enterprise herein described, and which said ownership interest and property rights are subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

(26) Through the aforesaid pattern of racketeering activity, SAM C. MARTINO, maintained in violation of

Title 18, United States Code, Section 1962, ownership interest and property rights in and to the following companies: SAM C. MARTINO Realty Brokerage Company, Ybor Loan Company and M & S Investment Corporation, all of Tampa, Florida, which afforded a source of influence over the Enterprise herein described, and which said ownership interest and property rights are subject to forfeiture to the United States under the provisions of Title 18, United States Code, Section 1963(a) & (c).

All of which was in violation of Sections 1962(c) and 2 of Title 18, United States Code.

• • • • •

THE GRAND JURY FURTHER CHARGES:

COUNTS TWENTY-EIGHT & TWENTY-NINE

From in or about June, 1975, and continuing to on or about November 4, 1975, in the Middle District of Florida,

JOSEPH C. RUSSELLO, a/k/a "Joe",
JOSEPH D. LAZZARA, a/k/a "Joe",
JOSEPH J. CARTER, a/k/a "Joe",
AND
WILLIE NORIEGA, a/k/a "Bill",

defendants herein, and others both known and unknown unto the Grand Jury, did devise and intend to devise, a scheme and artifice to defraud and obtain money by means of false and fraudulent pretenses, representations and promises, from an insurance company, namely, Cincinnati Insurance Company, well knowing at the time that the pretenses, representations and promises, would be and were false when made; the scheme and artifice so devised and intended to be devised, being in substance as follows.

It was a part of the scheme and artifice to defraud and to obtain money from said insurance company by means of false and fraudulent pretenses, representations and promises, to-wit:

1. That JOSEPH C. RUSSELLO, a/k/a "Joe", had a financial interest in the property located at 4601 West Kennedy Boulevard, Tampa, Florida.

2. That JOSEPH C. RUSSELLO, a/k/a "Joe", d/b/a Joseph C. Russello & Associates, was a named insured in an insurance policy issued by the Cincinnati Insurance Company insuring the premises at 4601 West Kennedy Boulevard, against fire loss in the amount of $925,000.00 on the building and $7,500.00 on contents.

3. That JOSEPH C. RUSSELLO, a/k/a "Joe", JOSEPH D. LAZZARA, a/k/a "Joe", JOSEPH J. CARTER, a/k/a "Joe", and WILLIE NORIEGA, a/k/a "Bill", agreed to burn the premises at 4601 West Kennedy Boulevard, in order to fraudulently obtain money from said Cincinnati Insurance Company, relating to its aforementioned fire insurance coverage.

4. That on or about August 17, 1975, WILLIE NORIEGA, a/k/a "Bill", wilifully started a fire at the premises located at 4601 West Kennedy Boulevard.

5. That on or about August 20, 1975, JOSEPH C. RUSSELLO, a/k/a "Joe", submitted a signed and sworn partial Proof of Loss statement form to JOSEPH J. CARTER, a/k/a "Joe", in substantiation of a fraudulent claim, stating therein that the fire loss at 4601 West Kennedy Boulevard did not originate by any act, design, or procurement on his part, when, in truth and fact, as JOSEPH C. RUSSELLO, a/k/a "Joe", JOSEPH D. LAZ-

ZARA, a/k/a "Joe", JOSEPH J. CARTER, a/k/a "Joe", and WILLIE NORIEGA, a/k/a "Bill", then well knew, the premises had been damaged by arson on or about August 17, 1975, in furtherance and as part of the scheme devised by JOSEPH C. RUSSELLO, a/k/a "Joe", JOSEPH D. LAZZARA, a/k/a "Joe", JOSEPH J. CARTER, a/k/a "Joe", and WILLIE NORIEGA, a/k/a "Bill", to fraudulently obtain money from said insurer, the Cincinnati Insurance Company.

6. That on or about the dates listed below, in the Middle District of Florida, and elsewhere, JOSEPH C. RUSSELLO, a/k/a "Joe", JOSEPH D. LAZZARA, a/k/a "Joe" JOSEPH J. CARTER, a/k/a "Joe", and WILLIE NORIEGA, a/k/a "Bill", defendants herein, for the purpose of executing the aforesaid scheme and artifice to defraud and obtain money by making false and fraudulent pretenses, representations and promises, did knowingly place and cause to be placed envelopes containing certain matters and things listed below in an authorized depository for mail matter to be sent and delivered according to the directions thereon by the Postal Service of the United States, each mailing being a separate count of this Indictment:

COUNT TWENTY-EIGHT

Sender:	Joseph J. Carter Carter and Larson, Adjusters Tampa, Florida
Addressee:	Cincinnati Insurance Company Cincinnati, Ohio
Date:	On or about August 21, 1975
Contents:	Property adjuster's first report with enclosed sworn partial Proof of Loss statement.

COUNT TWENTY-NINE

Sender: Cincinnati Insurance Company
Cincinnati, Ohio

Addressee: Poe and Associates, Inc.
Tampa, Florida

Date: On or about October 10, 1975

Contents: Draft number B48927 made payable to Joseph C. Russello and Pilot Life Insurance Company in the amount of $161,190.43.

All in violation of Sections 1341 and 2, Title 18, United States Code.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA — TAMPA

Docket No. 77-00083-Cr-T-H
Andrew Minyo, Acting Clerk

UNITED STATES OF AMERICA

vs.

JOSEPH C. RUSSELLO
a/k/a JOE

(Filed at Tampa, Fla. July 27, 1982)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date—April 7, 1978.

COUNSEL—

____ WITHOUT COUNSEL—However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

× WITH COUNSEL—Raymond LaPorte.

PLEA—

____ GUILTY, and the court being satisfied that there is a factual basis for the plea,

____ NOLO CONTENDERE, × NOT GUILTY.

FINDING & JUDGMENT—

There being a verdict of

____ NOT GUILTY. Defendant is discharged

× GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully and knowingly conspiring with persons to commit an offense against the United States, that is: to conduct and participate in the affairs of an enterprise through a pattern of racketeering activity, participation in the conduct of these affairs, and mail fraud; all in violation of Sections 1962(d), 1962(c), 2, and 1341, Title 18, United States Code, as charged in Counts 1, 2, 28, and 29 of the indictment.

SENTENCE OR PROBATION ORDER—

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Ten (10) years as to Counts 1 and 2, concurrently, and Five (5) years as to Counts 28 and 29, concurrently with each other and with counts 1 and 2, all pursuant to Title 18, United States Code, Section 4205(b)(2). Execution of the sentence is deferred for Fifteen days and thereafter until such time as the defendant is notified by the United States Marshal as to when, where and to whom he should report to begin serving such sentence

U. S. MARSHALS
April 11, 1978, 9:37 a.m.
TAMPA or C.
MIDDLE DISTRICT OF FLA.

SPECIAL CONDITIONS OF PROBATION—

ADDITIONAL CONDITIONS OF PROBATION—

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of

probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION—
The court orders commitment to the custody of the Attorney General and recommends,

SIGNED BY—

× U. S. District Judge

_____ U. S. Magistrate

/s/ WM. TERRELL HODGES
Date—April 7, 1978.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U. S. Marshal or other qualified officer.

Certified as a True Copy on
This Date_____

By X. Henry

(__) Clerk
(×) Deputy

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO. 77-83-CR-T-H

Microfilmed—Roll No. 73

UNITED STATES OF AMERICA

vs.

JOSEPH J. CARTER, et al

(Filed February 28, 1978)

SPECIAL VERDICT

We, the Jury, unanimously find beyond a reasonable doubt that the defendant, JOSEPH C. RUSSELLO, acquired $75,000.00 from an insurance policy on the premises located at 4601-29 West Kennedy Boulevard, Tampa, Florida, the proceed of draft number B40023, drawn on the account of Cincinnati Financial Corporation on or about August 25, 1975, as set forth in Count Two of the Indictment, item (13) under subsection 6 entitled *"Forfeitures"* thereof, and we hereby declare the same to be an interest and property forfeited to the United States.

YES ✓

NO_____

So Say We All,

/s/ James R. Adkins
Jury Foreman

Dated at Tampa, Florida, this 28th day of February, 1978.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO. 77-83-CR-T-H

Microfilmed—Roll No. 73

UNITED STATES OF AMERICA

vs.

JOSEPH J. CARTER, et al

(Filed February 28, 1978)

SPECIAL VERDICT

We, the Jury, unanimously find beyond a reasonable doubt that the defendant, JOSEPH C. RUSSELLO, acquired $75,000.00 from an insurance policy on the premises located at 4601-29 West Kennedy Boulevard, Tampa, Florida, the proceed of draft number B45166, drawn on the account of Cincinnati Financial Corporation on or about September 19, 1975, as set forth in Count Two of the Indictment, item (12) under subsection 6 entitled *"Forfeitures"* thereof, and we hereby declare the same to be an interest and property forfeited to the United States.

YES ✓

NO_____

So Say We All,

/s/ James R. Adkins
Jury Foreman

Dated at Tampa, Florida, this 28th day of February, 1978.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO. 77-83-CR-T-H

Microfilmed—Roll No. 73

UNITED STATES OF AMERICA

vs.

JOSEPH J. CARTER, et al

(Filed February 28, 1978)

SPECIAL VERDICT

We, the Jury, unanimously find beyond a reasonable doubt that the defendant, JOSEPH C. RUSSELLO, acquired $161,190.43 from an insurance policy on the premises located at 4601-29 West Kennedy Boulevard, Tampa, Florida, the proceed of draft number B48927, drawn on the account of Cincinnati Financial Corporation on or about October 10, 1975, as set forth in Count Two of the Indictment, item (11) under subsection 6 entitled *"Forfeitures"* thereof, and we hereby declare the same to be an interest and property forfeited to the United States.

YES ✓

NO_____

So Say We All,

/s/ James R. Adkins
Jury Foreman

Dated at Tampa, Florida, this 28th day of February, 1978.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO. 77-83-CR-T-H

Microfilmed—Roll No. 73

UNITED STATES OF AMERICA

vs.

JOSEPH J. CARTER, et al

(Filed February 28, 1978)

SPECIAL VERDICT

We, the Jury, unanimously find beyond a reasonable doubt that the defendant, JOSEPH C. RUSSELLO, acquired $28,852.66 from an insurance policy on the premises located at 4601-29 West Kennedy Boulevard, Tampa, Florida, the proceed of draft number B51974, drawn on the account of Cincinnati Financial Corporation on or about November 4, 1975, as set forth in Count Two of the Indictment, item (10) under subsection 6 entitled *"Forfeitures"* thereof, and we hereby declare the same to be an interest and property forfeited to the United States.

YES ✓

NO_____

So Say We All,

/s/ James R. Adkins
Jury Foreman

Dated at Tampa, Florida, this 28th day of February, 1978.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO. 77-83 CR-T-H

Microfilmed—Roll No. 75

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PAUL GUARINO, ROLANDO GONZALEZ RODRIGUEZ, JOSEPH C. RUSSELLO, and SAM C. MARTINO,

Defendants.

(Filed November 17, 1978)

ORDER AND JUDGMENT OF FORFEITURE

On February 24, 1978, the Defendants PAUL GUARINO, ROLANDO GONZALEZ RODRIGUEZ, JOSEPH C. RUSSELLO and SAM C. MARTINO were convicted by a jury of a violation of 18 USC § 1962(c). On February 28, 1978, the same jury returned special verdicts against each of those defendants declaring certain interests and properties held by them to be forfeited to the United States under the provisions of 18 USC § 1963. Upon receipt of those special verdicts the Court requested the submission of memoranda on behalf of all parties concerning the procedures to be followed in enforcing the special verdicts of forfeiture. Having considered the memoranda of counsel, it is hereby

ORDERED:

1. As to the Defendant PAUL GUARINO, that the amount of $4,000 is hereby forfeited and that judgment in

the sum of $4,000 is hereby granted in favor of the United States of America and against the Defendant PAUL GUARINO, for which let execution issue.

2. As to the Defendant ROLANDO GONZALEZ RODRIGUEZ, that the amounts of $3,000 and $1,226.83 are hereby forfeited and that judgment in the sum of $4,226.83 is hereby granted in favor of the United States of America and against the Defendant ROLANDO GONZALEZ RODRIGUEZ, for which let execution issue.

3. As to the Defendant JOSEPH C. RUSSELLO, that the amounts of $28,852.66, $161,190.43, $75,000.00 and $75,000.00 are hereby forfeited and that judgment in the sum of $340,043.09 is hereby granted in favor of the United States of America and against the Defendant JOSEPH C. RUSSELLO, for which let execution issue.

4. As to the Defendant SAM C. MARTINO, that the amount of $2,500 is hereby forfeited and that judgment in the sum of $2,500 is hereby granted in favor of the United States of America and against the Defendant SAM C. MARTINO, for which let execution issue.

5. As to the Defendant SAM C. MARTINO, that any and all ownership interest and property rights which he has maintained in and to Ybor Loan Company are hereby forfeited and that the Defendant SAM C. MARTINO is hereby directed to transfer to the United States of America and deliver to the United States Marshal for seizure by the Attorney General any and all certificates, documents, or other proof of ownership interests and property rights which he has maintained in and to Ybor Loan Company, including but not limited to certificates of stock in that corporation.

6. As to the Defendant SAM C. MARTINO, that any and all ownership interests and property rights which he has maintained in and to M & S Investment Corporation are hereby forfeited and that the Defendant SAM C. MARTINO is hereby directed to transfer to the United States of America and deliver to the United States Marshal fo[illegible]izure by the Attorney General any and all certificates, documents or other proof of ownership interests and property rights which he has maintained in and to M & S Investment Corporation, including but not limited to certificates of stock in that corporation.

7. That the Defendants GUARINO, RODRIGUEZ, RUSSELLO and MARTINO shall have thirty (30) days from the date of this Order to attempt to obtain a stay of its provisions. Absent a grant of a stay by the United States Court of Appeals for the Fifth Circuit within that period, the forfeitures ordered herein will take immediate effect upon the expiration of that time.

DONE and ORDERED at Tampa, Florida, this 17th day of November, 1978.

Wm. Terrell Hodges
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 77-83 Cr. T. H.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH C. RUSSELLO, et al.,

Defendants.

(Filed November 27, 1978)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that JOSEPH C. RUSSELLO, Defendant in the above styled cause, hereby appeals to the United States Court of Appeals for the Fifth Circuit, from an Order and Judgment of Forfeiture entered in this cause on the 17th day of November, 1978.

Respectfully submitted,

/s/ Raymond E. LaPorte
408 Madison Street
Tampa, Florida 33602
(813) 229-1891

Attorney for Defendant,
Joseph C. Russello

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished, by delivery, to the Honorable Bill James, Assistant United States Attorney, Post Office Box 2841, Tampa, FL 33601 on this the 27th day of November, 1978.

/s/ Raymond E. LaPorte, Attorney

UNITED STATES of America,

Plaintiff-Appellee,

vs.

Sam C. MARTINO, Joseph C. Russello and Rolando Gonzalez Rodriquez,

Defendants-Appellants.

UNITED STATES of America,

Plaintiff-Appellee,

vs.

John Alan HOLT, Rosario Palermo, William H. Brown, a/k/a Bill, John D. Fisher, Robert D. Young, Joseph Macaluso, a/k/a Joe, Frank Scionti, John Nicholas Lostracco, Sam C. Martino, Paul Guarino, Jimmy Farina, Berton B. Chase, a/k/a Bert, Rolando Gonzalez Rodriguez, a/k/a Roland Rodriguez, Joseph D. Lazzara, a/k/a Joe, Joseph C. Russello, a/k/a Joe and Amalia Morgado,

DefendantsAppellants.

UNITED STATES of America,

Plaintiff-Appellee,

vs.

Sam C. MARTINO,

Defendant-Appellant.

Nos. 78-3611, 78-5260 and 79-2606.

United States Court of Appeals, Fifth Circuit.

June 19, 1981.

(Redacted to Forfeiture)

Sixteen defendants appealed from a combined total of 80 convictions rendered in the United States District Court for the Middle District of Florida, at Tampa, Wm.

Terrell Hodges, J., for mail fraud and violations of Racketeer Influenced and Corrupt Organizations Act arising out of arson ring. The Court of Appeals, Politz, Circuit Judge, held that: (1) RICO is constitutional; (2) indictment was sufficient, not duplicitous, did not misapply RICO, and there was no variance affecting defendants' substantial rights; (3) prosecution for substantive and conspiracy violations of RICO did not violate double jeopardy clause; (4) there was no abuse of discretion in denial of motion for bill of particulars; (5) there were no *Brady* violations mandating reversal; (6) trial judge was not obligated to ask court-appointed expert to determine government witness' mental capacity at time of alleged offenses; (7) trial judge did not abuse his discretion in denying repeated motions for severance; (8) Government did not violate Jencks Act; (9) prosecutor's referring to witness' participation in federal witness protection program was not unfair exploitation; (10) comment made by counsel for one defendant was harmless; (11) one defense counsel's comment on his client's decision to testify was not an improper reference to other defendants' decisions not to testify; (12) trial judge's refusal to strike government witness' responses was not erroneous; (13) trial judge did not abuse his discretion in ruling key government witness competent to testify; (14) court properly admitted plea bargain agreement of government's key witness; (15) witness' reference to his willingness to take lie detector test was not prejudicial; (16) there was no reversible error reference to defendants' election not to testify; (17) there was no error in trial judge's allowing breaks in sequestration; (18) one defendant was not deprived of his right to unbiased grand jury; (19) there

was no error in exclusion of testimony of government witness' threats against employer of one defense witness; (20) trial judge correctly charged jury as to evidence required for mail fraud conviction; (21) evidence was sufficient to support convictions except on two counts of mail fraud, one count of conspiracy to violate RICO and two other RICO counts; (22) trial judge did not abuse his discretion in denying motion for new trial based on newly discovered evidence; (23) insurance proceeds received by certain defendants from burning of their properties were not subject to forfeiture; and (24) one defendant's interest in two companies were subject to forfeiture.

Convictions affirmed in part and reversed in part, denial of motion for new trial affirmed, and orders of monetary forfeiture reversed in part and affirmed in part.

FORFEITURE

Docket Number 78-3611

[112] The jury returned verdicts ordering the forfeiture of insurance proceeds collected by defendants Russello, Rodriguez, Martino and Guarino. Martino, Russello and Rodriguez appealed the forfeiture orders; Guarino did not.[19] The issue, one of first impression in this court, is whether the term "interest" in 18 U. S. C. § 1963(a) includes income or receipts from racketeering activity.

---

19. Guarino belatedly raises the issue in his brief on appeal of his conviction. This is not sufficient to vest appellate jurisdiction. The order of forfeiture is a different judgment from the sentence and commitment order. A separate notice of appeal was required.

Under 18 U. S. C. § 1963(a), a defendant convicted of violating RICO must:

> forfeit to the United States (1) any interest he has acquired or maintained in violation of Section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of Section 1962.

Rodriguez was ordered to forfeit $4,226.83, Russello's forfeiture was for $340,043.09, and Martino was ordered to forfeit $2,500 together with his ownership, interest and property rights in two companies, Ybor Loan Company and M & S Investment Corporation. The appellants' challenges to the forfeiture orders center on the definition of "interest" as used, but not defined, in the statute. The government takes the position that income or profits from an illegal enterprise are forfeitable under § 1963; appellants contend that § 1963 applies only to an interest in an enterprise. Appellants' position is supported by decisions of other courts.

In *United States v. Meyers*, 432 F. Supp. 456, 461 (W. D. Pa. 1977), the court indicated that it would be a "strained construction of Section 1963" to classify profits or fruits received from the enterprise as "interest" in the enterprise or as a claim or right that could afford a source of influence over the enterprise. The court went on to note that "the more natural interpretation is that an 'interest' is akin to a continuing proprietary right in the nature of partnership or stock ownership (or holding a debt or claim, as distinguished from 'equity' investment) rather than mere dividends or distributed profits."

Id. This interpretation was approved by the court in *United States v. Thevis,* 474 F. Supp. 134, 142 (N. D. Ga. 1979), which held that "the limits of forfeiture authorized by 18 U. S. C. § 1963 do not embrace fruits or profits derived from the operation of a § 1962 enterprise." Several factors were considered by the court in reaching that conclusion. The different treatment Congress accorded income and interest was noted—§ 1962(a) makes it illegal to invest income derived from racketeering activity in the acquisition of an interest in an enterprise. Congress recognized that income and profits could be generated by racketeering activity but it chose to include in the forfeiture provision only the interest acquired or held and not the income of an enterprise. The *Thevis* opinion also recognized that the "enterprise" concept is the basis of § 1962 and that the forfeiture provision is directed toward an interest acquired or maintained "in violation of Section 1962." Thus the existence of the enterprise is also a cornerstone of § 1963. The court was convinced that the use of the word "interest" was limited to interest in the enterprise. Our colleagues of the Ninth Circuit, in a well-reasoned opinion, recently held that § 1963 applies to interest "in an enterprise" and not to any form of income or proceeds derived from a pattern of racketeering activity. *United States v. Marubeni America Corp.,* 611 F. 2d 763 (9th Cir. 1980).

In reaching our conclusion we are impressed by several considerations. In enacting 18 U. S. C. § 1963, Congress permitted *in personam* forfeitures that had previously been prohibited by 18 U. S. C. § 3563. Viewed in that perspective one would expect that Congress would strictly limit forfeitures. In this instance the limitation

would be to the defendant's interest in the enterprise he had corrupted. Such an intent was indicated by the comments of Deputy Attorney General Richard P. Kleindienst before the Senate Subcommittee on Criminal Laws and Procedures when he said:

> It is felt that this revival of the concept of forfeiture as a criminal penalty *limited as it is in* § 1963(a) to one's interest in the enterprise which is the subject of the specific offense involved here, and not extending to any other property of the convicted offender, is a matter of congressional wisdom rather than of Constitutional power . . . . (Emphasis in original.)

Forfeiture under 18 U. S. C. § 1963—RICO's Most Powerful Weapon, 17 Am. Crim. L. Rev. 379, 385 (1980), *quoting* Measures Relating to Organized Crime, Hearings Before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary, 91st Cong., 1st Sess. 66 (1969). Furthermore, had Congress intended to include fruits and profits, it could have specifically provided for such as it did in the Comprehensive Drug Abuse Prevention and Control Act of 1970, passed by the same Congress in the same month as RICO. 21 U. S. C. § 848(a) (2) states: "Any person who is convicted under paragraph (1) of engaging in a continuing criminal enterprise shall forfeit to the United States—(A) *the profits* obtained by him in such enterprise . . . . " (Emphasis added.)

[113] We are convinced Congress did not intend to include in the forfeiture provision of § 1963 the fruits and profits obtained from a pattern of racketeering activity. We are aware this holding occasions problems with respect to associations in which one cannot own a

legal interest, as in the case *sub judice*. This limitation was recognized by the Justice Department when it stated that "there is often nothing to forfeit . . . in the case of individuals associated in fact." *Forfeiture under 18 U.S.C. § 1963—RICO's Most Powerful Weapon, supra* at 391, *quoting* U.S. Department of Justice, Explanation of the Racketeer Influenced and Corrupt Organization Statute 2 (4th ed.). The kind of enterprise will, therefore, be critical in the determination of forfeitable interests.

[114] Having concluded that only interests in an enterprise are subject to forfeiture, we reverse the monetary forfeiture orders against Russello, Rodriguez and Martino. The insurance proceeds they received from the burning of their properties were proceeds or profits from the enterprise; the proceeds did not constitute "interest in an enterprise."

[115] We affirm the order of forfeiture of Martino's interest in his two companies because it falls squarely within the language of § 1963(a) (2) which provides for the forfeiture of any interest affording a source of influence over the enterprise. Both of Martino's companies were active in the enterprise. They provided funds for the arson and fraud ventures. The M & S Investment Corporation purchased property with the intent to burn it, but sold the property to someone else who then burned it. Martino was an active participant; he played an important role within the enterprise, a role made even more effective because of the companies he managed. The Act requires forfeiture of his intrest in these companies.

The orders of monetary forfeiture entered against Martino, Russello and Rodriguez are REVERSED. The order of forfeiture of Matino's interest in Ybor Loan Company and M & S Investment Corporation is AFFIRMED.

APPENDIX

As noted below, some fires were listed only as overt acts and/or acts of racketeering in Counts 1 and 2 while others were also the subjects of mail fraud counts (Counts 3 through 35). We list only those fires that are at the core of the convictions appealed. All addresses are in Tampa, Florida, unless otherwise indicated.

1. 1202 E. Buffalo Avenue, a bakery (Counts 1 and 2)—Guarino and Scionti burned the premises with the help of two other arsonists who died as a result of the fire.

2. 3401 24th Street (Counts 1 and 2)—Guarino, Noriega and Scionti burned a frame house owned by Scionti in his brother's name. Scionti received a $4,000 settlement on the insurance policy.

3. 1811 Taliaferro Street (Counts 1, 2, 3 and 4)—Guarino, Noriega and Scionti burned a frame house belonging to Palermo and Guarino (silent partner). This house was burned twice; insurance proceeds were collected by Palermo both times. The first time he collected on a policy transferred to him when he bought the house. After the first fire, he made cosmetic repairs to the house and obtained insurance coverage through a different agency. After the second fire, he collected the full face value of this policy, $10,000.

4. 20410 Old Cutler Road, Miami (Counts 1, 2, 5 and 6) —Guarino, Scionti and Noriega burned a laundromat belonging to Lazzara. Lazzara received only $15,117 although he submitted a claim for $40,000.

5. 2208 10th Street and 923 12th Avenue (Counts 1, 2 7 and 8)—Guarino, Noriego and Macaluso burned two adjacent frame buildings owned by Rodriguez. $4,226.83 was collected by Rodriguez through the help of Carter.

6. 2917-2917½ 20th Avenue (Counts 1, 2, 9 and 10)— Noriega and Guarino burned a frame house owned by Farina in his mother's name. Farina received $4,000 in insurance proceeds.

7. 3006 N. Nebraska Avenue (Counts 1, 2, 11, 12 and 13) —Macaluso bought a house from Noriega and had Guarino and Noriega burn it. With help from Carter, $23,000 in insurance proceeds was paid to Macaluso.

8. 2020 E. Columbus Drive (Counts 1, 2, 14, 15 and 16) —Noriega and Guarino burned a frame house acquired by Noriega through the assistance of Martino. With the help of Carter, $20,000 was paid on three different insurance policies, two purchased by Noriega and one transferred to him by the prior owner. The property was later burned again by Noriega and he collected an additional $7,105.77.

9. 2510 12th Street (Counts 1 and 2)—Martino purchased an option on a warehouse with the intent to insure it and then burn it. Necessary repairs were made in order to obtain insurance. Guarino and Noriega then bought the option from Martino and

put it in the name of Alex Fekete who exercised the option. An office was set up in the warehouse and a $50,000 insurance policy was obtained (in addition to the $30,000 policy transferred from the previous owner who retained a mortgage position for the credit portion of the sale). When more money was needed to cover repairs, Chase got a loan from a client who was given a second mortgage. Noriega burned the property. Fekete had allowed the additional insurance to lapse by failing to pay the premiums. The insurance recovery on the original insurance was paid to the first mortgage holder.

10. 2114 27th Street (Counts 1, 2, 17 and 18)—Fekete and Noriega burned an apartment owned by a relative of Lostracco (co-worker of Martino in his real estate business). A transfer of the property from Lostracco's brother-in-law to Jimmy Traina (straw man for Noriega and Guarino) was attempted but was not completed before the property was burned. The $4,500 in insurance proceeds was initially paid to Lostracco's brother-in-law, but was later delivered over to Noriega, Guarino and Arrigo.

11. 409 E. Oak Street (Counts 1, 2, 19 and 20)—Guarino and Noriega burned a two-story frame house owned by Guarino. The house had been "placarded" by city housing inspectors prior to the fire. Cosmetic repairs were made to the exterior of the house and with Carter's guidance, insurance was obtained. Following the fire the insurance company refused to pay the face value of the policy. Carter intervened and arranged for a $10,000 settlement.

12. 3310 Vasconia Street (Counts 1, 2, 21 and 22)—Noriega and Arrigo burned a house owned by Holt.

Morgado had made the necessary arrangements for Holt. When Holt acquired the property he transferred the existing policy and obtained additional coverage. The first attempt at burning the house was unsuccessful; in the second attempt the building was totally destroyed. Holt claimed $41,501.55 under one policy and $36,501.55 under another.

13. 4601 W. Kennedy Boulevard (Counts 1, 2, 28 and 29)—Noriega and Traina set fire to the Central Professional Building owned by Russello. Insurance coverage on the premises paid $340,043.09 through adjustments made by Carter.

14. 3012 Highland Avenue (Counts 1 and 2)—Guarino and Noriega attempted to burn a frame apartment building owned by an acquaintance of Guarino. The fire was spotted by neighbors and extinguished prior to extensive damage.

15. 3658 S. Westshore Boulevard (Counts 1, 2, 31 and 33)—Noriega burned a True Value Hardware Store owned by Bill Brown. Prior to the fire, Brown had obtained $175,000 in additional insurance with the help of Carter. The fire was only partially successful, and though Brown claimed damages of over $100,000, the insurance company estimated the damages at only $15,000 and refused to pay the claim.

16. 1907-1915 N. Armenia Avenue (Counts 1, 2, 32 and 33)—This property was acquired by Fisher and Young through arrangements made by Noriega. After superficial repairs were made, insurance coverage was obtained. The building was heavily damaged by fire and $125,000 was collected from the insurance company.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

No. 78-3611

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

SAM C. MARTINO, JOSEPH C. RUSSELLO, and ROLANDO GONZALEZ RODRIGUEZ,

Defendants-Appellants.

Appeals from the United States District Court for the Middle District of Florida

---

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(Opinion June 19, 1981, 5 Cir., 1981 —, 648 F. 2d 367).

(October 14, 1981)

Before GODBOLD, Chief Judge, BROWN, AINSWORTH, CHARLES CLARK, RONEY, GEE, TJOFLAT, HILL, FAY, RUBIN, VANCE, KRAVITCH, FRANK M. JOHNSON, JR., GARZA, HENDERSON, REAVLEY, POLITZ, HATCHETT, ANDERSON, RANDALL, TATE, SAM D. JOHNSON, THOMAS A. CLARK, and WILLIAMS, Circuit Judges.

---

*Former Fifth Circuit case, Section 9(1) of Public Law 96-452—October 14, 1980.

BY THE COURT:

A majority of the Judges in active service, on the Court's own motion, having determined to have this case reheard en banc,

IT IS ORDERED that this cause shall be reheard by the Court en banc with oral argument on a date hereafter to be fixed. The Clerk will specify a briefing schedule for the filing of supplemental briefs. That portion of the Court's consolidated opinion of June 19, 1981, covering this appeal is vacated.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
October 14, 1981

Gilbert F. Ganucheau
Clerk

Tel. 504-589-6514
600 Camp Street
New Orleans, LA 70130
Zip Code—70130-3479

TO ALL COUNSEL OF RECORD:

No. 78-3611 — U. S. A. v. Martino, Et Al.

Dear Counsel:

Enclosed is an order entered this day on the Court's own motion directing that this cause be reheard en banc with oral argument.

While the entire appeal from the Order and Judgment of Forfeiture is being reopened, the En Banc Court is principally concerned with the question of whether insurance proceeds are subject to forfeiture under the Forfeiture Provisions of the RICO statute. Under Fifth Circuit Local Rule 17, the panel's opinion in this cause beginning on Slip Page 8274 has been vacated along with the judgment entered thereon.

Pursuant to the Court's direction for the Clerk to specify a briefing schedule for the filing of supplemental briefs, appellants will have until November 10, 1981, for filing their supplemental brief, with appellee's supplemental brief to be filed in this office not later than December 5, 1981. THE SUPPLEMENTAL BRIEFS

MUST BE ON FILE IN THE CLERK'S OFFICE BY THE SPECIFIED DATES ABOVE BECAUSE THE CASE WILL BE ARGUED DURING THE WEEK OF JANUARY 11, 1982.

All parties are requested to furnish thirty (30) copies of their supplemental briefs and *opening briefs* previously filed, for the use of the en banc court.

Very truly yours,

/s/ GILBERT F. GANUCHEAU
Gilbert F. Ganucheau
Clerk

GFG/jmg
Enclosure

Mr. B. Frank Winkles
Mr. Raymond E. LaPorte
Mr. Peter N. Macaluso
Ms. Eleanor J. Hill
Ms. Sara Criscitelli

cc: Hon. William Terrell Hodges

UNITED STATES of America,

Plaintiff-Appellee,

v.

Sam C. MARTINO, Joseph C. Russello and Rolano Gonzalez Rodriguez,

Defendants-Appellants.

No. 78-3611.

United States Court of Appeals, Fifth Circuit.*

Aug. 2, 1982

Appeal was taken from a judgment of the United States District Court for the Middle District of Florida, Wm. Terrell Hodges, J., directing the forfeiture of moneys received by defendants as insurance payments in an insurance fraud scheme. In a panel opinion, the Court of Appeals, Politz, Circuit Judge, 648 F. 2d 367, certiorari denied, — U. S. —, 102 S. Ct. 2020, 72 L. Ed. 2d 474, reversed. Rehearing en banc was granted. The Court of Appeals, James C. Hill, Circuit Judge, held that insurance proceeds obtained through conduct of arson ring were subject to forfeiture under criminal forfeiture provisions of racketeer influenced and corrupt organizations statute.

Affirmed; remanded.

Politz, Circuit Judge, dissented and filed opinion in which Alvin B. Rubin, Tate, Thomas A. Clark, Jerre S. Williams, and Garwood, Circuit Judges, joined.

---

*Former Fifth Circuit case, section 9(1) of Public Law 96-452, October 14, 1980.

1. Statutes — 188

In absence of clearly expressed legislative intention to contrary, plain language of statute controls its construction.

2. Forfeitures — 3

Term "interest" as used in criminal forfeiture provision of racketeer influenced and corrupt organizations statute includes income or profit derived from pattern of racketeering activity and is not limited to interests in in enterprise. 18 U. S. C. A. §§ 1961-1968, 1963(a) (1).

See publication Words and Phrases for other judicial constructions and definitions.

3. Forfeitures — 3

Insurance proceeds obtained through conduct of arson ring were subject to forfeiture under criminal forfeiture provisions of racketeer influenced and corrupt organizations statute. 18 U. S. C. A. §§ 1961-1968, 1963(a) (1).

D. Frank Winkles, Tampa, Fla., for Martino.

Raymond E. LaPorte, Tampa, Fla., for Russello.

Peter N. Macaluso, Tampa, Fla., for Rodriguez.

Eleanor J. Hill, Sp. Atty., Dept. of Justice, Tampa, Fla., Sara Criscitelli, Dept. of Justice, Washington, D. C., for the U. S.

William W. Taylor, III, Washington, D. C., for amicus curiae.

Appeals from the United States District Court for the Middle District of Florida.

Before GODBOLD, Chief Judge, BROWN, CHARLES CLARK, RONEY, GEE, TJOFLAT, HILL, FAY, RUBIN, VANCE, KRAVITCH, FRANK M. JOHNSON, Jr., HENDERSON, REAVLEY, POLITZ, HATCHETT, ANDERSON, RANDALL, TATE, SAM D. JOHNSON, THOMAS A. CLARK, WILLIAMS and GARWOOD, Circuit Judges.**

JAMES C. HILL, Circuit Judge:

We granted rehearing en banc in this case to decide whether the term "interest" as used in 18 U. S. C. § 1963 (a) (1), the Criminal forfeiture provision of the Racketeer Influenced and Corrupt Organizations statute (RICO), 18 U. S. C. §§ 1961-1968[1], includes income or profits derived from a pattern of racketeering activity. Specifically at issue in this case is the forfeitability of insurance proceeds obtained through the conduct of an arson ring. The district court resolved this question of statutory construction in the government's favor. On appeal a panel of this court reversed the monetary forfeiture orders.[2] We now affirm the decision reached by the trial court.

**Judge Reynaldo G. Garza was a member of the en banc court under 28 U. S. C. A. 46(c) and participated in the oral argument of the case en banc. Subsequently, the Omnibus Judgeship Bill, Public Law 95-486 (95th Congress) was approved October 20, 1978. In view of this, Judge Garza does not participate in this decision.

[1]RICO constitutes Title IX of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 941 (1970).

[2]*United States v. Martino*, 648 F. 2d 367, 407-09 (5th Cir. 1981), *vacated in part on other grounds sub nom. United States v. Holt*, 650 F. 2d 651 (5th Cir. 1981) (conviction of defendant Holt mooted by his death). The panel's discussion of the forfeiture issue was not printed in the federal reporter due to our grant of rehearing en banc. That section appears in full in the advance sheets, slip op. at 8274-76 (5th Cir. June 19, 1981).

I.

The facts surrounding the indictment, prosecution, and conviction of the various defendants are set out in detail in the panel opinion, 648 F. 2d at 378-80, 409-11 app. Briefly, the evidence showed that a group of individuals associated for the purpose of committing arson with the intent to defraud insurance companies. This association in fact enterprise,[3] composed of an insurance adjuster, homeowners, promoters, investors, and arsonists, operated to destroy at least eighteen residential and commercial properties in Tampa and Miami, Florida between July 1973 and April 1976. The panel summarized the ring's operations as follows:

> At first the arsonists only burned buildings already owned by those associated with the ring. Following a burning, the building owner filed an inflated proof of loss statement and collected the insurance proceeds from which his co-conspirators were paid. Later, ring members bought buildings suitable for burning, secured insurance in excess of value and, after a burning, made claims for the loss and divided the proceeds.

Id. at 380. These activities formed the basis for an indictment charging twenty-three defendants with mail fraud,[4] conspiring to violate RICO,[5] and substantive RICO violations.[6] Following a jury trial sixteen defendants were found guilty and sentenced to varying terms of imprisonment.[7] Pursuant to Federal Rule of Criminal Procedure

---

[3] 18 U. S. C. § 1961(4) (1976).

[4] 18 U. S. C. § 1341 (1976).

[5] 18 U. S. C. § 1962(d) (1976).

[6] 18 U. S. C. § 1962(c) (1976).

[7] 648 F. 2d at 379 n. 1.

31(e),[8] the forfeiture question was then submitted to the jury for its special verdict on the extent of the interest or property subject to forfeiture. The jury ordered four defendants to forfeit monies received as insurance payments upon the successful burning of their properties: Paul Guarino—$4,000.00; Sam C. Martino—$2,500.00;[9] Rolando G. Rodriguez—$4,266.83; and Joseph C. Russello —$340,043.69. Concluding that § 1963(a)(1) was intended to reach only interests in an enterprise and not the profits or income from racketeering activity, the panel reversed these monetary forfeitures. 648 F. 2d at 409.[10]

II.

A.

[1] Resolution of this issue of statutory construction must begin with an analysis of the language of the statute itself. *Bread Political Action Committee v. Federal Election Commission*, — U. S. —, —, 102 S. Ct. 1235, 1237, 71 L. Ed. 2d 432 (1982) (quoting *Dawson Chemical Co. v. Rohm & Haas Co.*, 448 U. S. 176, 187, 100 S. Ct. 2601, 2608, 65 L. Ed. 2d 696 (1980)). In the absence of "a clearly ex-

---

[8]That rule provides: "If the indictment or the information alleges that an interest or property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the interest or property subject to forfeiture, if any."

[9]Defendant Martino was also ordered to forfeit his ownership interests in two companies, Ybor Loan Company and M & S Investment Corporation. Both of these companies provided funds for the arson and fraud schemes. The panel affirmed the forfeiture of these interests, 648 F. 2d at 409. The propriety of this aspect of the forfeiture order has not been questioned on this rehearing.

[10]This reversal did not affect the forfeiture order against defendant Guarino, as he did not file a notice of appeal from that order. 648 F. 2d at 407 n. 19.

pressed legislative intention to the contrary," the plain language of the statute controls its construction. — U. S. —, 102 S. Ct. at 1238 (quoting *Consumer Product Safety Comm'n v. GTE Sylvania,* 447 U. S. 102, 108, 100 S. Ct. 2051, 2056, 64 L. Ed. 2d 766 (1980)). Under 18 U. S. C. § 1963(a), a defendant who

> violates any provision of section 1962 . . . shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interests in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

On its face, § 1963(a)(1) does not limit forfeitable interests to those in an enterprise. Rather, the statute speaks broadly of "*any* interest" which is the product of violating RICO's prohibitory provision, section 1962. Significantly, § 1963(a)(2) expressly limits forfeitable interests to those in an enterprise. Guiding our efforts at statutory construction in the past has been the presumption that "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, . . . Congress acts intentionally and purposely in the disparate inclusion or exclusion." *United States v. Wong Kim Bo,* 472 F. 2d 720, 722 (5th Cir. 1972).[11] Hence the limitation in § 1963(a)(2), and the absence of limitation in § 1963(a)(1), confirm what the straightforward language of the latter already tells us: that § 1963(a)(1) reaches *any* interest derived from a violation of § 1962.

---

[11] As we shall note *infra,* that presumption is fully borne out in this case by the revisions made to § 1963(a) before it assumed the form in which it was enacted.

[2, 3] No definition of the term "interest" appears in RICO. We must assume "that the legislative purpose is expressed by the ordinary meaning of the words used." *Richards v. United States*, 369 U. S. 1, 9, 82 S. Ct. 585, 7 L. Ed. 2d 492 (1962). The common or dictionary definition of the term includes "right, title, or legal share in something; participation in advantage, profit, and responsibility." Webster's Third New International Dictionary 1178 (1971). It has also been defined as "[t]he most general term that can be employed to denote a right, claim, title, or legal share in something." Black's Law Dictionary 729 (5th ed. 1979). The concept is therefore broad enough to include profits or income. Indeed, this understanding comports with the House Report's definition of "interest" as inclusive of "all property and interests, as broadly described, which are related to the violations." H. R. Rep. No. 1549, 91st Cong., 2d Sess. 57 *reprinted in* [1970] U. S. Code Cong. & Ad. News 4007.

Not only is the concept of profits or proceeds within the plain meaning of "interest," but the proceeds in question in this case were "acquired . . . in violation of section 1962," as § 1963(a)(1) requires. The insurance proceeds were the product of the defendants' violation of § 1962(c). That section makes it unlawful for "any person . . . associated with any enterprise . . . to conduct or participate . . . in the conduct of such enterprise's affairs through a pattern of racketeering activity. . . ." In this case, members of the arson ring conducted the affairs of that enterprise through the racketeering offenses of arson and mail fraud. Thus the unambiguous language of § 1963(a)(1) supports the view that profits derived from a pattern of racketeering activities are subject to forfeiture.

Defendants and amicus[12] maintain that their position —that forfeitable interests under § 1963(a)(1) are limited to interests in an enterprise—also is supported by the language of the statute. Their analysis of the statute cannot withstand scrutiny. The only express limitation on forfeitable interests imposed by the language of the statute itself is that the interest must be "acquired or maintained in violation of section 1962." Defendants and amicus, however, read a further limitation into this language. Specifically they argue that "one acquires or maintains an interest in violation of Section 1962 *only* when he acquires or maintains an interest *in contravention of Sections 1962(a) or (b).*" Brief for Amicus Curiae at 7 (emphasis added). Briefly, § 1962(a) proscribes the use or investment of illegally derived income to acquire, establish, or operate an enterprise, while § 1962(b) prohibits the use of racketeering methods to acquire or maintain an interest in an enterprise.[13] Accordingly, the defendants and amicus argue, the link between the prohibitory provisions in §§ 1962(a)

---

[12]The National Association of Criminal Defense Lawyers, Inc. was permitted to participate as amicus curiae on rehearing.

[13]In pertinent part these sections provide:

> (a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt . . . to use or invest ,directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in or the activities of which affect, interstate or foreign commerce. . . .
>
> (b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of

(Continued on next page)

and (b), which refer to acquiring or maintaining violations, and the penal provision in § 1963(a)(1), which refers to interests "acquired or maintained" in violation of RICO, is clear. This reasoning, however, is flawed in several respects. First, it completely ignores § 1962(c). The language of § 1963(a)(1) ties forfeiture to violation of *any* of the prohibitory provisions in § 1962, not just §§ 1962(a) and (b).[14]

Second, the argument of defendants and amicus misconstrues the function of the reference in § 1963(a)(1) to § 1962. To be sure, the reference serves a kind of limiting function, but that function is not to define the type of forfeitable interests, as defendants and amicus assume. Rather, the reference merely identifies the illegal activities which trigger the forfeiture penalty, supplying the nexus between the RICO violation and the forfeitable property which the government must establish at trial.[15]

(Continued from previous page)

an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

18 U. S. C. §§ 1962(a), (b) (1976).

[14]The district court in *United States* v. *Thevis*, 474 F. Supp. 134 (N. D. Ga. 1979), fell into this same error in concluding that § 1963(a)(1) does not reach proceeds derived from a violation of § 1962(c).

[15]Again, this second error also infected the district court's reasoning in *Thevis*. That court opined:

Since it is the addition of the "enterprise" concept which distinguishes a RICO prosecution under 18 U. S. C. § 1962

(Continued on next page)

Third, reading an enterprise limitation into § 1963 (a)(1) renders that section surplusage. Section 1963 (a) (2) on its face requires forfeiture of "any interest in . . . any enterprise which [the defendant] has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962." The establishment, operation, and control language clearly refers to violations of §§ 1962(a) and (b). Section 1963(a)(1) would merely be duplicative of this provision if, as defendants contend, it reaches only interests in an enterprise acquired or maintained in violation of §§ 1962(a) and (b).

The cure for these defects in reasoning lies in an examination of the effect of § 1963(a)(1) on a § 1962(c) violation. Section 1962(c) makes conducting an enterprise through a pattern of racketeering unlawful. The forfeiture resulting therefrom, under § 1963(a)(1), is the interest (or interests) acquired through or as a result of that unlawful conduct. Forfeiture of defendant's interest *in* the enterprise is governed by the impact of § 1963(a)(1) and (2) upon § 1962(a) and (b). If § 1962(c) results in any forfeiture at all—and § 1963(a) provides

---

(Continued from previous page)

from an ordinary prosecution directed at each of the individual predicated [sic] acts which constitute the pattern of racketeering activity, this Court is convinced that the "interest" subject to forfeiture under 18 U. S. C. § 1963(a) is limited to the interest in the enterprise and does not extend to fruits or profits generated from the enterprise.

Thevis, 474 F. Supp. at 142. That the enterprise concept is the overriding concept in RICO, distinguishing a RICO *prosecution* from an ordinary prosecution for the predicate acts of racketeering, does not necessarily mean that the enterprise concept is also a limitation on the type of property interests subject to forfeiture under § 1963(a)(1).

for forfeiture if one violates *any* § 1962 section—it must provide for forfeiture of something more than § 1962(a) or (b) or be mere surplusage. This interpretation restores § 1963(a)(1) to a role in the penalty scheme different from that played by § 1963(a)(2) and accords with the unambiguous language of the former section.

Turning now from the language of the statute itself to expressions of legislative intent, we find confirmation for our view that § 1963(a)(1) reaches profits derived from racketeering activity.[16] In its Statement of Findings and Purpose prefatory to the Organized Crime Control Act of 1970, Congress spoke of the problem it sought to resolve in the following words:

> (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized

---

[16]The government directs our attention to RICO's liberal construction clause, arguing that it provides a definitive guide to the proper interpretation of § 1963(a)(1). In that clause Congress has mandated that "[t]he provisions of [RICO] shall be liberally construed to effectuate its remedial purposes." Organized Crime Control Act of 1970. Pub. L. No. 91-452, § 904 (a), 84 Stat. 947 (1970). In response the defendants and amicus contend that following this congressional directive would violate the rule of lenity, which calls for strict construction of penal provisions. We need not resolve the suggested conflict because we find no ambiguity in the statute which would occasion the invocation of either of these interpretive aids. The rule of lenity "only serves as an aid for resolving an ambiguity." *Callanan v. United States*, 364 U. S. 587, 596, 81 S. Ct. 321, 326, 5 L. Ed. 2d 312 (1961); see *McElroy v. United States*, — U. S. —, —, 102 S. Ct. 1332, 1341, 71 L. Ed. 2d 522 (1982). As we discussed above, the language of § 1963(a)(1) is plain, and as we shall note *infra*, the legislative history is equally clear in revealing the broad scope which Congress intended § 1963(a) to have.

> crime *derives a major portion of its power through money obtained from such illegal endeavors* as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens . . . .

Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922-23 (1970) (emphasis added). Having identified the problem, Congress also determined the cause for the criminal justice system's failure to make inroads on organized crime and its economic power base and proposed the cure it envisioned the new Act to embody.

> [S]anctions and remedies available to the Government are unnecessarily limited in scope and impact.
>
> It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing *new penal prohibitions*, and by providing *enhanced sanctions and new remedies* to deal with the unlawful activities of those engaged in organized crime.

Id. at 923 (emphasis added). The Senate Committee Report on the bill reiterated this philosophy.

> What is needed here, the committee believes, are new approaches that will deal not only with individuals,

> but also with the economic base through which those individuals constitute such a serious threat to the economic well being of the Nation. In short, an attack must be made on *their source of economic power itself*, and the attack must take place on all available fronts.

S. Rep. No. 617, 91st Cong., 1st Sess. 79 (1969) (emphasis added). Simply put, Congress' express objective in RICO is to take the profit out of organized crime.[17]

---

[17]The legislative history is replete with references to this broad "hit them where they hurt" philosophy. Senator McClellan, chief sponsor of the Act, voiced the urgency of the need for new penal remedies to divest organized crime of the "ill-gotten gains [amassed by] criminals where they enter or operate an organization through a pattern of racketeering activity." 116 Cong. Rec. 592 (1970) (remarks of Sen. McClellan). Senator McClellan further commented: "Title IX attacks the problem by providing a means of wholesale removal of organized crime from our organizations, prevention of their return, and, where possible, *forfeiture of their ill-gotten gains.*" 116 Cong. Rec. 591 (1970) (remarks of Sen. McClellan) (emphasis added). R presentative Poff, a manager of the bill in the House, viewed the criminal forfeiture provision as more than a penalty. "After conviction, the ill-gotten gains must be forfeited to the Government. This sanction is not only poetic justice but a strong deterrent as well." 115 Cong. Rec. 9951 (1969). Senator Byrd, a member of the Senate Judiciary Committee, also spoke of the deterrence effected by the broad forfeiture sanctions: "By removing its leaders from positions of ownership, by preventing them and their associates from regaining control, *and by visiting heavy economic sanctions on their predatory business practices* this legislation should prove to be a mighty deterrent to any further expansion of organized crime's economic power." 116 Cong. Rec. 607 (1970) (remarks of Sen. Byrd) (emphasis added).

This court has also recognized that the purpose of the forfeiture provision is to "deprive those convicted of racketeering activity of their economic base so that they could not easily continue illegal activities." *United States v. L'Hoste*, 609 F. 2d 796, 814 (5th Cir.), *cert. denied*, 449 U. S. 833, 101 S. Ct. 104, 66 L. Ed. 2d 39 (1980).

The criminal forfeiture provisions of § 1963(a) are central to this remedial objective. Section 1963(a) launches a two-pronged attack on the sources of economic power which feed the coffers and activities of organized crime. It demands both divestiture of power over the enterprise itself[18] and seizure of the income derived from racketeering activities.

From the debates on the Organized Crime Control Act, it is clear that the target of Congress' attack included racketeering operations in which the chief type of property interest obtained by organized crime would be something other than an ownership or proprietary interest.[19] For example, the legislative history refers to instances in which organized crime members infiltrate legitimate businesses, "bleed" these companies through fraud or theft, and thus force them into bankruptcy.[20] Organized crime

---

[18]We note that interests in an enterprise may take varying forms since they encompass both ownership interests (e. g., stock ownership or real property interests) and interests affording a source of influence over or control of the enterprise. *See, e. g., United States v. Rubin*, 559 F. 2d 975 (5th Cir. 1977), *vacated and remanded on other grounds*, 439 U. S. 810, 99 S. Ct. 67, 58 L. Ed. 2d 102 (1978) (forfeiture of union office).

[19]To be sure, Congress principally viewed RICO as a response to organized crime's infiltration into legitimate businesses. *United States v. Turkette*, 452 U. S. 576, 591, 101 S. Ct. 2524, 2533, 69 L. Ed. 2d 246 (1981). Accordingly, it contemplated the forfeiture primarily of ownership or controlling interests in such businesses. This does not mean, however, that we should blind ourselves to other forms of racketeering which Congress also declared to be the object of its concern and should embrace the circumscribed approach advanced by defendants and amicus.

[20]Senator Hruska documented one instance in which an organized crime figure became president of a company, bought large quantities of supplies on credit, ran up debts of approxi-

(Continued on next page)

was also linked to credit card and bad check frauds, 116 Cong. Rec. 970 (1970) (remarks of Sen. Bible), and to theft from welfare and pension funds, 115 Cong. Rec. 5874 (1969) (remarks of Sen. McClellan). The Senate Report cited examples of arson schemes, particularly in the context of liquidating defaulted loan shark debts by burning the debtor's property and collecting the insurance proceeds. S. Rep. No. 617, 91st Cong., 1st Sess. 77 (1969). *See also* 115 Cong. Rec. 5873 (1969) (remarks of Sen. McClellan). Narcotics trafficking, loan sharking, insurance fraud, extortion, gambling, and prostitution—all crimes in which the proceeds primarily consist of money—were all objects of congressional concern.[21]

In addition, when as here the RICO enterprise is an association in fact, rather than a legal entity, and the alleged RICO violation is conducting the affairs of this enterprise through racketeering methods, there often may be no forfeitable property other than the ill-gotten proceeds. Such may be the case not only with arson-for-profit rings but also with narcotics trafficking or pornography

---

(Continued from previous page)

mately $1.3 million, made quick cut-rate sales, and pocketed about $750,000 of company funds for personal use. 115 Cong. Rec. 23569 (1969) (remarks of Sen. Hurska). Senator McClellan noted that "[a]pproximately 200 syndicate-inspired bankruptcy schemes are perpetrated annually." 116 Cong. Rec. 18940 (1970) (remarks of Sen. McClellan).

[21] See, e. g., 115 Cong. Rec. 5873, 5874, 5884-85 (1969) (remarks of Sen. McClellan); 116 Cong. Rec. 585, 586 (1970) (remarks of Sen. McClellan); 601 (remarks of Sen. Hruska); 606 (remarks of Sen. Byrd); 953 (remarks of Sen. Thurmond); 962 (remarks of Sen. Murphy); 970 (remarks of Sen. Bible); 35199 (remarks of Rep. St. Germain); 35300 (remarks of Rep. Mayne). *See also* 18 U. S. C. § 1961(1) (Supp. IV 1980) (list of predicate acts of racketeering activity which may form basis of RICO prosecution).

operations. It would certainly be contrary to Congress' stated intention to attack organized crime's source of economic power "on all available fronts," S. Rep. No. 617, 91st Cong., 1st Sess. 79 (1969), to insulate from forfeiture the sole product of many racketeering activities. Excluding proceeds from the reach of § 1963(a)(1) would provide an incentive, not a deterrent, to bankruptcy schemes and to other forms of racketeering which yield primarily cash revenues.

Still further support for a broad interpretation of § 1963(a)(1) is found in the legislative history.[22] An early draft of RICO, S. 1861, which was introduced on April 18, 1969, contained only one basic forfeiture provision and did expressly limit forfeitable property to interests in an enterprise. It read in full:

> Whoever violates any provision of section 1962 of this chapter shall be fined not more than $10,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States all interest *in the enterprise* engaged in, or the activties of which affect, interstate or foreign commerce.

S. 1861, 91st Cong., 1st Sess. (1969). In mid-October, however, the Senate Judiciary Committee began a revision of RICO. Out of the revision developed a section 1963(a) containing two subparts. Section 1963(a)(2) retained the concept of limiting forfeiture to a defendant's interest in an enterprise. On the other hand, section

---

[22]We are mindful that the language of the statute, and not the legislative history, is the law of the land. Indeed "the language of the statute [is] the most reliable evidence of its intent. . . ." *United States v. Turkette*, 452 U. S. 576, 593, 101 S. Ct. 2524, 2533, 69 L. Ed. 2d 246 (1981). With that caveat we proceed.

1963(a)(1) dropped the enterprise limitation altogether. We find it persuasive that Congress considered limiting all forfeitures under RICO to enterprise interests but, after extensive legislative work, ultimately opted to delete this across-the-board restriction.

Finally, in examining the legislative history we must address one of the chief reasons cited by the panel for its conclusion that § 1963(a)(1) does not reach the insurance proceeds at issue here. In August 1969 Congress received a letter from the Deputy Attorney General Richard P. Kleindienst commenting upon RICO's forfeiture provision. It expressed the views of the Justice Department as follows:

> It is felt that this revival of the concept of forfeiture as a criminal penalty, *limited as it is in Section 1963 (a) to one's interest in the enterprise* which is the subject of the specific offense involved here, and not extending to any other property of the convicted offender is a matter of Congressional wisdom rather than of constitutional power. . . .

Measures Relating to Organized Crime, Hearings Before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary, 91st. Cong., 1st Sess. 407 (1969) (emphasis added). The panel viewed the letter as indicative of congressional intent strictly to limit forfeitures. This interpretation of the letter's significance, however, ignores its context.

First, Congress was aware that it was entering new territory with the enactment of RICO; there was concern particularly over the constitutionality of the sanction of

the personam criminal forfeiture.[23] The Kleindienst letter addresses that concern, explaining that constitutional problems are avoided by the requirement of a nexus between a § 1962 violation and the interest to be forfeited. Furthermore, the letter was submitted as a commentary on S. 1961, the original draft of RICO, which as we have noted above, contained a unitary forfeiture provision with an express enterprise limitation. While the Senate Report on S. 30, the bill ultimately enacted, does cite Kleindienst's letter,[24] nothing in the report suggests that the letter provides a technical commentary on the scope of each section of the expanded bill.

Our more limited interpretation of the meaning of the Kleindienst letter finds support in the Justice Department's comments in subsequent House hearings on S. 30 as it passed the Senate.

> [Title IX] contains a provision for the forfeiture of any interest which has been attained in violation of the criminal provisions of the statute. The Department of Justice commented at length *upon the constitutionality of this sanction* in a report on S. 1861,

---

[23]Reacting against the harsh English tradition of criminal forfeiture, the framers of the Constitution provided:

> The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

U. S. Const. art. III, § 3, cl. 2. The first Congress also enacted a provision barring corruption of the blood or forfeiture of estate upon conviction. Act of Apr. 30, 1790, I Stat. 117, ch. 9 § 24 (codified in 18 USC. § 3563).

[24]S. Rep. No. 617, 91st Cong., 1st Sess. 79 (1969).

> from which Title IX has been derived, in [the Kleindienst letter]. . . .

Hearings on S. 30 Before Subcomm. No. 5 of the House Comm. on the Judiciary, 91st Cong., 2d Sess. 171 (1970) (emphasis added). Notably, the Justice Department's comments on S. 30 do not described § 1963(a) forfeitures as limited to interests in an enterprise.

III

Our holding today squarely conflicts with that of the Ninth Circuit in *United States v. Marubeni America Corp.*, 611 F. 2d 763 (9th Cir. 1980).[25] *But see United States v. Godoy*, 678 F. 2d 84 (9th Cir. 1982) (holding that commercial real estate purchased with profits derived from racketeering activity is subject to forfeiture). For several reasons, some of which we have already discussed,[26] we find the *Marubeni* rationale unconvincing.

---

[25]In *Marubeni* two corporations and several individuals were charged with mail fraud, wire fraud, interstate travel to commit bribery, and conspiracy to commit these offenses. These acts were committed as part of a scheme to rig the competitive bidding for contracts to supply telephone cable. The government appealed from the district court's dismissal of that portion of the indictment seeking forfeiture of the over $8.8 million in profit on the telephone cable contracts. These profits were alleged to be the product of the defendants' conduct of the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U. S. § 1962(c), *United States v. Marubeni America Corp.*, 611 F. 2d 763, 764 (9th Cir. 1980).

[26]Among the reasons compelling the Ninth Circuit's decision were the linguistic relationship between § 1963(a)(1) and §§ 1962(a) and (b) and the Justice Department views as expressed in the Kleindienst letter. 611 F. 2d at 766, 768. For a thorough critical analysis of the entire opinion see Trojanowski, *RICO Forfeiture: Tracing and Procedure; Appendix: United States v. Marubeni America Corp. and the Scope of RICO Forfeiture*, in 1 Techniques in the Investigation and Prosecution of Organized Crime 378a (G. Blakey ed. 1980), and Note, *RICO: Are the Courts Construing the Legislative History Rather Than the Statute Itself?*, 55 Notre Dame Law. 777, 783-89 (1980).

In *Marubeni* the Ninth Circuit focused much of its attention on the "1% investment exception" in § 1962(a). *Id.* at 766-67. To the general prohibition in § 1962(a) on investment of income derived from a pattern of racketeering activity Congress added an exception.

> A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securties of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

18 U. S. C. § 1962(a) (1976). From this the Ninth Circuit reasoned: "Congress would not have established rules for the investment of racketeering income, enforced by the penalty of criminal forfeiture, if it intended the government to seize that income regardless of how it was used." 611 F. 2d at 767. Our interpretation of § 1963(a)(1) does not, as the Ninth Circuit's comment would imply, render § 1962(a)'s 1% investment exception meaningless. We believe that the court in *Marubeni* obscured the separate functions of the prohibitory and penalty provisions of RICO.

The 1% investment exception evidences Congress' choice *not to criminalize* the investment of illegally derived income when the total investment is *de minimis* and thus would not grant the racketeer control over the business

entity. So understood the exception functions as a practical limit, exempting from prosecution what otherwise would constitute illegal activity under § 1962(a). If the investment of illegally derived income constitutes less than 1% of the issuer's outstanding shares, that investment alone violates no criminal proscription and hence triggers no forfeiture at all. The exception thus limits the definition of what is illegal. It does not immunize from forfeiture the fruits of activities that are made illegal under other provisions of § 1962; it "does not create a class of investment of illicit income exempt from forfeiture."[27]

The court in *Marubeni* also points to the use of the term "profits" in the forfeiture provision of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U. S. C. § 848(a)(2)(A),[28] as evidence that Congress would have expressed itself more clearly in § 1963(a)(1) if it had intended forfeiture of racketeering income. 611 F. 2d at 766 n. 7. As we observed above, the concept of "interest" is broad and encompasses the notion of profits. Moreover, Congress' use of differing language for the two forfeiture provisions, with the more comprehensive term employed in RICO, is a logical byproduct of the different evils addressed by the two acts. Under attack in the Comprehensive Drug Abuse Prevention and Control Act of 1970 is the narcotics trafficking industry in which organized crime is engaged. The continued dealing in illegal drugs which is proscribed by that Act typically involves

---

[27] *Trojanowski, supra* note 26, at 378aa.

[28] The statute provides: "Any person who is convicted . . . of engaging in a continuing criminal enterprise shall forfeit to the United States—(A) the profits obtained by him in such enterprise. . . ." 21 U. S. C. § 848(a)(2)(A) (1976).

cash transactions. By contrast, the interests acquired by violating RICO may take a variety of forms since many types of activity, primarily economic crimes, come within the scope of its prohibition. *See* 18 U. S. C. § 1961(1) (Supp. IV 1980) (definition of "racketeering activity"). Hence Congress' use of "profits" in 21 U. S. C. § 848(a)(2)(A) cannot support the negative inference in the court in *Marubeni* perceived it to have as to the meaning of "interest" in 18 U. S. C. § 1963(a)(1).

IV

At oral argument a question was raised as to whether the government has an obligation to trace and identify the current form of monetary proceeds before it may collect on a forfeiture order. Clearly this issue goes to collectibility and related procedures and not to the type of interests forfeitable under § 1963(a)(1). The parties did not brief this issue, and we do not resolve it today. Under 18 U. S. C. § 1963(c)[29] and Federal Rule of Criminal Procedure 32(b)(2),[30] the district court must determine the terms and conditions under which the defendants must comply with the monetary forfeitures declared in the special jury verdict and affirmed by our holding today. Because on remand the district judge must undertake this

---

[29]In relevant part the statute directs: "Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeitable under this section upon such terms and conditions as the court shall deem proper." 18 U. S. C. § 1963(c) (1976).

[30]"When a verdict contains a finding of property subject to a criminal forfeiture, the judgment of criminal forfeiture shall authorize the Attorney General to seize the interest or property subject to forfeiture, fixing such terms and conditions as the court shall deem proper." Fed. R. Crim. P. 32(b)(2).

task, we make a few observations on the nature of the questions with which he must grapple. Focusing on the *in personam* character of RICO criminal forfeiture, the government contends in a supplemental letter to this court that it has no obligation whatever at this point[31] to trace the insurance proceeds into their current form. According to the government, the monetary forfeiture order is like any other money judgment, permitting it to satisfy the judgment from any of the defendants' current assets.[32] Commentators, on the other hand, have suggested that normal principles of restitution, particularly the theories of constructive trust and equitable lien, should be applied to trace forfeitable property that has changed form.[33] We intimate no views on the question, leaving it for the district

---

[31]Questions regarding the specificity required in the indictment in order to comply with Federal Rule of Criminal Procedure 7(c)(2) and the extent to which tracing principles apply in satisfying that requirement are not before us.

[32]The government points out that its practice in prosecutions under the Comprehensive Drug Abuse Prevention and Control Act of 1970 is to trace the flow of profits and the property later acquired by the profits and to identify the final form of the profits in the indictment. That practice, the government advises, is compelled by the practical inability otherwise to identify the forfeitable sum involved in large drug transactions. The government submits, however, that such tracing is neither statutorily nor constitutionally required. It further points out that, because the amount of the insurance proceeds at issue here is readily identifiable, the inability to otherwise arrive at the forfeitable sum does not compel resort to tracing in this case.

[33]*Trojanowski, supra* note 26, at 364; Weiner, *Crime Must Not Pay: RICO Criminal Forfeiture in Perspective*, 1 N. Ill. U. L. Rev. 225, 256 (1981).

court to determine in the first instance if the issue be raised there.[34]

V

RICO is a powerful and flexible weapon designed to break the economic power of organized crime and hence to undermine its ability to disrupt and drain the national economy. We acknowledge that its breadth supplies a potential for great abuse. The harshness of the statute's impact, however, cannot dictate the proper construction of its provisions. Congress was aware of the far-reaching measures it was enacting to deal with the unprecedented problem of organized crime. The plain language of the statute, its remedial and deterrent purposes, and the legislative history all compel the conclusion that § 1963(a)(1) encompasses forfeiture of the income or proceeds of racketeering activity.

The judgment of the district court on the forfeiture issue is

AFFIRMED; REMANDED FOR FURTHER PROCEEDINGS.[35]

POLITZ, Circuit Judge, joined by ALVIN B. RUBIN, VANCE, TATE, THOMAS A. CLARK, JERRE S. WILLIAMS and GARWOOD, Circuit Judges, dissenting:

---

[34]The prospect of a priority conflict among competing claimants to the proceeds was also raised at oral argument. We note only that RICO itself directs the Executive to make "due provisions for the rights of innocent persons" in disposing of forfeited property. 18 U. S. C. § 1963(c) (1976).

[35]With regard to other issues addressed by the panel on appeal, the panel opinion is reinstated.

Respectfully, I dissent, regretting that I cannot join by colleagues in one of the last cases decided en banc by the Former Fifth Circuit. I am unable to concur in the holding that a payment made under a fire insurance policy necessarily constitute a forfeitable "interest" under 18 U. S. C. § 1963(a)(1), being of the opinion that the language, structure and purpose of the Racketeer Influenced and Corrupt Organization Act direct a different conclusion.

The issue posited by the court today is whether the term "interest," as used in § 1963(a)(1), "includes income or profits derived from a pattern of racketeering activity." That is the larger issue, but perhaps the more precise issue at bar is whether, under the RICO forfeiture provisions, a money judgment may be rendered against a defendant, in a sum equal to the amount paid under a fire insurance policy, for a loss occasioned by arson in a setting violative of RICO.

Just as nature abhors a vacuum, historically our society has abhorred forfeitures. As Judge Hill notes in footnote 23, the framers of the Constitution demonstrated their repudiation of the harsh English tradition of criminal forfeiture, and our very first Congress forbade the forfeiture of an estate because of a criminal conviction. Further, a forfeiture with an *in personam* application, as we have before us, is to be most charily assessed. It is from this perspective that I address the inquiry before the en banc court.

RICO is Title IX of the Organized Crime Control Act of 1970, Congress's solar plexus blow to organized crime. The Act and its legislative history reflect Congress's determination to counter the takeover of legitimate busi-

nesses, as well as to combat organized, illegal activities. In enacting RICO, Congress ordained a criminal statute of vast scope and stern consequences, aimed at punishing and deterring those who would wreak havoc in the social and economic fabric of our society.

The penalties to which Congress subjected a violator of RICO, as set forth in § 1963, include a fine of up to $25,000, imprisonment of up to 20 years, and the forfeiture to the United States of:

> (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

18 U. S. C. § 1963(a)(1) & (2).

The court today concludes that the word "interest," as here used, includes income or profits derived from a pattern of racketeering activity. I do not share that conclusion, adhering to the view expressed in the panel opinion that the term "interest," as used in § 1963(a)(1) applies only to an interest in the enterprises envisioned in §§ 1962(a), (b) and (c) and not to income derived from illegal activity. Whether this distinction is wise, prudent or appropriate is, as I perceive it, a matter best left to the legislative branch, for it represents a significant policy decision.

The interests to be forfeited under § 1963(a)(1) are those acquired or maintained in violation of § 1962. Section 1962(a) prohibits acquiring, establishing or operating "an enterprise" with income derived "from a pat-

tern of racketeering activity or through collection of an unlawful debt." The exception contained in this section sharply focuses the pith of the entire section—money oozing from a pattern of racketeering activity, or resulting from collection of an unlawful debt, may not be used to infiltrate legitimate businesses unless the investment is made under certain limiting circumstances and constitutes less than 1% of the business's outstanding securities. This section prohibits the investment of tainted funds in a legitimate enterprise. Congress determined to place the protective mantle of the federal criminal law around legitimate businesses, guarding them from the corruption inherent in soiled funds. Section 1962(b) proscribes the acquiring or maintaining of an interest in or control of an enterprise through racketeering activity or by collection of an unlawful debt. Subsection (c) proscribes the conduct of the affairs of an enterprise through racketeering activity or unlawful debt collection. Recently, the Supreme Court made clear that subsections (b) and (c) apply to both legitimate and illegitimate associations. *United States v. Turkette*, 452 U. S. 576, 101 S. Ct. 2524, 69 L. Ed. 2d 246 (1981).

I am persuaded that the forfeiture sanction intended by § 1963(a)(1) relates to interests in a business acquired with tainted money (§ 1962(a)), and interests in any enterprise acquired or maintained by racketeering activity or unlawful debt collection (§ 1962(b)). I am further persuaded that § 1963(a)(2) relates primarily to an interest in an enterprise which is involved in conduct violative of § 1962(c). To me, the text of these sections clearly reflects that Congress made interests in enterprises the grist of forfeiture. The sections seek to pre-

vent the use of ill-gotten gains to corrupt businesses, to prevent the acquiring and maintaining of an interest in an enterprise through illegal activities, and to prevent the involvement of enterprises in illegal activities.

There are other reasons to believe that Congress did not intend "income" to be synonymous with "interest" for the purposes of forfeiture under § 1963. Although the definitional section, § 1961, does not include the specific meaning to be ascribed to "interest" or "income," the term "any interest" and the word "interest" appear in several places throughout the statute. Section 1961(3) refers to a "legal or beneficial interest in property." Section 1962(a) refers to "any interest in . . . any enterprise." Section 1962(b) repeats the words "any interest in . . . any enterprise." Further, § 1964(a), the civil remedies section, prescribes that the court may order a person "to divest himself of any interest, direct or indirect, in any enterprise." In each instance the meaning is clear—an "interest" is an interest *in an enterprise.*

The panel found persuasive the analysis of our colleagues of the Ninth Circuit in *United States v. Marubeni America Corp.*, 611 F. 2d 763 (9th Cir. 1980), who concluded that the forfeiture in RICO extends only to interests in an enterprise and does not include income or proceeds from a pattern of racketeering activity. I continue to be of that view and also find persuasive the discussion in *United States v. Thevis,* 474 F. Supp. 134 (N. D. Ga. 1979) and *United States v. Meyers,* 432 F. Supp. 456 (S. D. Pa. 1977).

The majorty concludes that "readng an enterprise limitation into § 1963(a)(1) renders that section surplus-

age." I disagree. One example underscores the error in this suggestion. Hypothesize that an individual uses income from racketeering activity to purchase 2% of the stock of a corporation listed on the stock exchange. The investment is totally passive; no element of control or influence envisioned by § 1963(a)(2) is involved. This interest would not be forfeitable under § 1963(a)(2), but it would be forfeitable under § 1963(a)(1) since the acquisition violates § 1962(a). The recognition of an enterprise limitation in § 1963(a)(1) does not, therefore, render that section surplusage.

The court today is not impressed with a portion of the legislative history cited by the panel, specifically the August 1969 letter from Deputy Attorney General Richard P. Kleindienst, in part because the letter specifically addressed another pending RICO proposal, S. 1861. Although acknowledging that the Kleindienst letter is cited in the Senate Report on S. 30, the enacted bill, the opinion maintains that the letter provides little meaningful guidance on the scope of the legislation as finally adopted. I disagree.

Although the Kleindienst letter refers to S. 1861, the Senate Report on S. 30 cites the letter as an accurate interpretation of the forfeiture clause. S. Rep. No. 91-617, 91st Cong., 1st Sess., 78-80 (1969). That report, in explaining the forfeiture provision notes:

> Section 1963 provides criminal penalties for the violation of section 1962, above. Subsection (a) provides the remedy of criminal forfeiture. . . . The language is designed to accomplish a forfeiture of any "interest" of any type *in the enterprise* acquired by the defendant or in which the defendant has participated in violation of section 1962.

(Emphasis added.) *Id.* at 160. Accord, *id.* at 34.

We find similar language in the House Report which speaks to forfeiture of interest "in an enterprise." H. R. Rep. No. 91-1549, 91st Cong., 1st Sess. 35 and 57 (1970), reprinted in 1970 U. S. Code Cong. & Admin. News, 4007, 4010.

The essence of the forfeiture grounds a further reason for my disagreement with the en banc court's conclusion that § 1963 allows for forfeiture of monies received as insurance proceeds. Although general forfeitures are historically disfavored, Congress has frequently used the onus of specific forfeitures in combating illegal activities. *See, e. g.*, 15 U. S. C. § 11 (forfeiture of property acquired in violation of anti-trust laws); 15 U. S. C. § 1177 (forfeiture of property used in connection with illegal gambling); 16 U. S. C. §§ 65, 117(d), 128, 171, 256c, 4081 (forfeiture of guns and other equipment used unlawfully in national parks); 18 U. S. C. § 924 (forfeiture of firearms used illegally); 18 U. S. C. § 1082 (forfeiture of property used in connection with illegal gambling); 18 U. S. C. § 3612 (forfeiture of bribe monies illegally received by public officials); 18 U. S. C. § 3615 (forfeiture of property used in connection with liquor violations); 18 U. S. C. § 3617(d) (forfeiture of vehicles and aircraft seized for a violation of liquor laws); 18 U. S. C. §§ 3618 & 3619 (forfeiture of conveyances used to introduce intoxicants into Indian territories); 19 U. S. C. § 1306 (forfeiture of unwholesome imported meat); 19 U. S. C. §§ 1453 & 1492 (forfeiture of property seized in violation of customs laws); 21 U. S. C. § 334 (forfeiture of adulterated food); 31 U. S. C. § 490 (forfeiture of funds illegally withheld by public official); 49 U. S. C. §§ 781 & 782 (forfeiture of vessels, vehicles and aircraft used to transport contraband). In each of these

instances, the forfeiture statutes provided for *in rem* actions against things put to illegal use. Although RICO prescribed an *in personam* forfeiture, it does not provide an unlimited sanction but is, I believe, restricted to the forfeiture of a specific interest in an enterprise which was acquired, or over which the defendant exercised control, contrary to § 1962. If Congress had intended otherwise, I am convinced it would have said so clearly and unequivocally.

No strangers to forfeitures generally, Congress is also no stranger to forfeitures of fruits and profits. If Congress meant to impose a forfeiture of income and proceeds in RICO, I suggest Congress could and would have done so in unmistakeable language. Congress knows how to decisively direct the forfeiture of profits. The same Congress which adopted RICO, in a matter of days adopted the Comprehensive Drug Abuse Prevention and Control Act of 1970. 21 U. S. C. § 848(a)(2) states: "Any person who is convicted under paragraph (1) of engaging in a continuing criminal enterprise shall forfeit to the United States—(A) *the profits* obtained by him in such enterprise. . . ." (emphasis added). That is the kind of specification one would expect Congress to use when creating our first *in personam* forfeiture statute.

The court today would distinguish this variance in Congressional approach by observing that narcotics trafficking typically involves cash transactions while RICO violations result in interests which take a variety of forms. I disagree with so light a rejection of what I see as a meaningful, instructive variant.

Based on the foregoing, I am of the view that Congress did not intend to include in the § 1963(a)(1) for-

feiture provision, fire insurance proceeds or other fruits and profits obtained from RICO proscribed activities, other than those which are manifested as interests in one of the enterprises described in § 1962. I am cognizant that this conclusion occasions problems with respect to associations in which one cannot own a legal interest, as in the case *sub judice*. This limitation was recognized by the Justice Department in its comments on the legislation, when it observed that "there is often nothing to forfeit . . . in the case of individuals associated in fact." *Forfeiture under 18 U.S.C. § 1963—RICO's Most Powerful Weapon*, 17 *Am. Crim. L. Rev.* 379, 391 (1980) (*quoting* U. S. Department of Justice, Explanation of the Racketeer Influenced and Corrupt Organization Statute 2 (4th ed.)) Under my analysis, the kind of enterprise necessarily would be critical in the determination of forfeitable interests. That this poses an enforcement burden or hurdle is, again, a legislative consideration.

Finally, accepting the proposition that insurance proceeds are forfeitable, I question whether the forfeiture sanction is applicable to Russello and Rodriguez. These two defendants owned and insured buildings before the advent of the RICO arson ring. They later participated and feloniously burned their properties. The insurance proceeds may be taken as a different manifestation of a pre-RICO violation asset. If so, are the insurance payments truly income, fruits, revenue or profits of racketeering activities?

Regardless, these proceeds, based on arson and the payments of which were induced by fraud, are very likely to be defeasible. One would expect that under the insurance contract, and controlling state law, the insurer would

be entitled to recapture the payments. In that event, what happens to the forfeiture decrees which are non-asset oriented money judgments, collectible from the defendants and their estates? Assuming recapture by the insurer, or diversion of all or a portion to an innocent third party such as a mortgage holder, will the United States still have an enforceable money judgment against the defendant and his estate? Presumably so, and if that presumption is correct, what about the concept of divestiture of ill-gotten gains and the separation of the convicted defendant from the fruits of his illegal labors? Will this matter not in fact resolve into the forfeiture becoming an additional fine? Did Congress really intend to establish a latent fine with a potential for exceeding the maximum statutorily stated fine ten-fold, twenty-fold or one hundred-fold?

I suggest that this type of difficulty is inherent in today's decision and is a direct concomitant of our holding that the forfeitable interest under § 1963(a)(1) extends beyond a present, discernible interest in an existing enterprise.

I respectfully dissent.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

January 10, 1983

Ronald A. Dion, Esq.
2020 Northeast 163rd Street
Suite 300
N. Miami Beach, Florida 33162

RE: Joseph C. Russello v.
United States
No. 82-472

Dear Mr. Dion:

The Court today entered the following order in the above-entitled case:

"The petition for a writ of certiorari is granted."

Enclosed are memorandums describing the time requirements and procedures under the rules.

I have been instructed to inform you that Rule 34(a) is satisfied by having the initial sheet in the brief state the "Questions Presented" without more. Counsel should not have printed on this page the title of the case or any other descriptive matter. A sample sheet is enclosed.

The additional docketing fee of $100, Rule 45(a), is due and payable.

Very truly yours,

ALEXANDER L. STEVAS, Clerk

By MISS JUNE HOFFMANN

(Miss) June Hoffmann
Assistant Clerk

enclosures